

LIFE ESIDIMENI ARBITRATION

**HELD AT: EMOYENI CONFERENCE CENTER, 15 JUBILEE ROAD,
PARKTOWN, JOHANNESBURG**

DATE: 1st DECEMBER 2017.

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SESSION 1 – 3.

BEFORE ARBITRATOR JUSTICE MOSENEKE –JUSTICE MOSENEKE

10

WITNESSES:

MS NOMPILO NKOSI

JOSEPH NGWENYA

15

SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Good morning, you may be seated. Where do we start?

ADV LILLA CROUSE: Justice we will call Nompilo Nkosi, she will testify in English. If it doesn't work, she might change to isiZulu. Her affidavit is ELA91 and she will take the oath.

ARBITRATOR JUSTICE MOSENEKE: Good morning to you.

MS NOMPILO NKOSI: Good morning Justice.

ARBITRATOR JUSTICE MOSENEKE: Would you put your full names on record please?

MS NOMPILO NKOSI: My name is Nompilo Nkosi.

ARBITRATOR JUSTICE MOSENEKE: Ms Nompilo Nkosi do you swear that the evidence you are about to give, will be the truth and nothing but the truth and if so, raise your right hand and say so help me God?

MS NOMPILO NKOSI: So help me God.

ARBITRATOR JUSTICE MOSENEKE: Very well. Advocate Crouse?

ADV LILLA CROUSE: Thank you Justice. Ms Nkosi your brother Sizwe, is a mental healthcare user is that right?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Please tell us about him, what is the problem?

MS NOMPILO NKOSI: Sizwe was diagnosed autistic, he is autistic.

ADV LILLA CROUSE: And what does that mean in relation to his functioning? Can he speak?

5**MS NOMPILO NKOSI**: When it's necessary he can speak one word.

ADV LILLA CROUSE: And can he walk?

MS NOMPILO NKOSI: He can walk, he can go to the bathroom, he cannot read, he does not go to school, he cannot write.

ADV LILLA CROUSE: And something that is dear to you in knowing whether he's
10happy, what does he do when he is happy?

MS NOMPILO NKOSI: He hums when he is happy.

ARBITRATOR JUSTICE MOSENEKE: He does what?

MS NOMPILO NKOSI: He hums.

ADV LILLA CROUSE: He can't sing, but he hums.

15**MS NOMPILO NKOSI**: Yes.

ADV LILLA CROUSE: Now where does he fit into your family?

MS NOMPILO NKOSI: Sizwe is the middle child, he is my brother.

ADV LILLA CROUSE: And you're the older sister?

MS NOMPILO NKOSI: Yes I am.

ADV LILLA CROUSE: Is there any other siblings?

MS NOMPILO NKOSI: We have a younger sister Xoliswa Nkosi.

ADV LILLA CROUSE: Is your mother and father still alive?

MS NOMPILO NKOSI: My father passed away, my mother is still alive.

5**ARBITRATOR JUSTICE MOSENEKE**: Is your mother present here?

MS NOMPILO NKOSI: No my mother is not present.

ADV LILLA CROUSE: Now Sizwe was institutionalised at a fairly young age, is that right?

MS NOMPILO NKOSI: Yes that is right.

10**ADV LILLA CROUSE**: When was he institutionalised?

MS NOMPILO NKOSI: When he was 11 years old.

ADV LILLA CROUSE: And that was in 1996 is that right?

MS NOMPILO NKOSI: It was in 1997.

ADV LILLA CROUSE: And where was he institutionalised?

15**MS NOMPILO NKOSI**: He was institutionalised at Waverley Care Centre in Germiston.

ADV LILLA CROUSE: That's a Life Esidimeni Centre?

MS NOMPILO NKOSI: Yes it is.

ADV LILLA CROUSE: He was there for quite a long time?

MS NOMPILO NKOSI: Yes he was.

ADV LILLA CROUSE: How did you as a family, feel towards the care that he received at Life Esidimeni Waverley?

MS NOMPILO NKOSI: We were very happy with the care that he received there.

5**ADV LILLA CROUSE**: Was he well cared for?

MS NOMPILO NKOSI: He was well cared for.

ADV LILLA CROUSE: Was he humming?

MS NOMPILO NKOSI: He was humming.

ADV LILLA CROUSE: Now you heard about the closure of the possible closure,
10when was this?

MS NOMPILO NKOSI: It was around August in 2015.

ADV LILLA CROUSE: And what was your first reaction to that?

MS NOMPILO NKOSI: Fear, we were scared.

ADV LILLA CROUSE: And why were you scared?

15**MS NOMPILO NKOSI**: Because we didn't know what was to come, what was to be expected, after, the, closure.

ADV LILLA CROUSE: You were also scared to take Sizwe home, isn't that so?

MS NOMPILO NKOSI: Yes we were.

ADV LILLA CROUSE: Please tell the Court, why, is that, what would happen when he is at home?

MS NOMPILO NKOSI: Sizwe sometimes get violent in such a way that he throws things to the neighbour's house, breaks things, he becomes pretty much violent and she jumps and then he runs away, so we are afraid for his life as well, because when one runs away, you don't know where they will end up.

ADV LILLA CROUSE: You are afraid for his safety?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Now you were afraid. Did you do anything about this when you heard about it in August?

MS NOMPILO NKOSI: Yes I did, I wrote a letter to the President's Office.

ADV LILLA CROUSE: Can you tell us when you wrote that letter?

MS NOMPILO NKOSI: I started writing letters around about October.

ADV LILLA CROUSE: Could you please go to-

15 **ARBITRATOR JUSTICE MOSENEKE**: Which President?

ADV LILLA CROUSE: Our President.

ARBITRATOR JUSTICE MOSENEKE: We don't have any presidents in this country, rugby clubs and soccer clubs-

ADV LILLA CROUSE: You mean number one?

20 **MS NOMPILO NKOSI**: The President of the State.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV LILLA CROUSE: Would you please go to ELA92 in front of you? Do you see that letter?

MS NOMPILO NKOSI: Yes I do.

5**ADV LILLA CROUSE**: And it's a letter on the face of it, the President of South Africa and its dated 4 November 2015, is that the first letter that you've written?

MS NOMPILO NKOSI: No it's not.

ADV LILLA CROUSE: You've written a letter before that date to the President?

MS NOMPILO NKOSI: Yes I did.

10**ADV LILLA CROUSE**: But you don't have a copy of that letter, is that right?

MS NOMPILO NKOSI: Yes correct.

ADV LILLA CROUSE: Now in this letter, did it ever bounce back to you?

MS NOMPILO NKOSI: This one didn't bounce back.

ADV LILLA CROUSE: In the first paragraph, you complain about residents in the
15hospital losing their home and 700 employees losing their source of income.

MS NOMPILO NKOSI: Correct.

ADV LILLA CROUSE: Was that a concern that you had at the time?

MS NOMPILO NKOSI: Yes it was.

ADV LILLA CROUSE: And did you receive any notice back on that letter?

MS NOMPILO NKOSI: No I did not.

ADV LILLA CROUSE: Now at a later stage, you again sent an email to the President.

MS NOMPILO NKOSI: Yes I did.

5**ADV LILLA CROUSE**: And your indication was that you were planning something, what was that?

MS NOMPILO NKOSI: We were planning a march on the 9th of December.

ADV LILLA CROUSE: To the President's Office?

MS NOMPILO NKOSI: Yes.

10**ADV LILLA CROUSE**: And as a result of this email that you've sent, what happened?

MS NOMPILO NKOSI: I received a call from the President's Office stating that we cannot come to the march because there is protocol to be followed.

ADV LILLA CROUSE: Okay so that email was definitely received by the
15President's Office?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Okay can I just follow the timeline, there is- you did other things as well isn't that so to get attention?

MS NOMPILO NKOSI: Yes I did.

20**ADV LILLA CROUSE**: What did you do?

MS NOMPILO NKOSI: I organised a march for the 16th of February 2016.

ADV LILLA CROUSE: Tell us about that march? Let me take you to ELA93, were you the organiser of the march?

MS NOMPILO NKOSI: Yes I was the convenor of the march.

5**ADV LILLA CROUSE**: Did you have to pay to get the march registered?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And you convened the march?

ARBITRATOR JUSTICE MOSENEKE: What do you mean I had to register?

ADV LILLA CROUSE: Can you tell the Honourable Justice how much you had to
10pay?

MS NOMPILO NKOSI: We had to pay R152.12.

ADV LILLA CROUSE: To whom?

MS NOMPILO NKOSI: To the JMPD. That is where we registered the march.

ADV LILLA CROUSE: And the document in front of you, it's a memorandum.

15**ARBITRATOR JUSTICE MOSENEKE**: If you don't pay, wouldn't you be able to
march?

MS NOMPILO NKOSI: According to my knowledge yes.

ARBITRATOR JUSTICE MOSENEKE: Okay.

ADV LILLA CROUSE: The document in front of you ELA93, that is the memorandum that was handed over at the march, is that right?

MS NOMPILO NKOSI: That is right.

ADV LILLA CROUSE: Let us just look at the document, you state in the second sentence, that the Department of Health is threatening the wellbeing rights and lives of your loved ones and that you are speaking and marching on their behalf, is that the reason for the march?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: You also in the third paragraph complain about not being consulted, is that right?

MS NOMPILO NKOSI: That is right.

ADV LILLA CROUSE: And you also complain that relocation can't happen on the 31st of March 2016 and the reason for that was?

MS NOMPILO NKOSI: It was too short notice and we didn't know how our loved ones were going to be prepared, we were scared for them.

ADV LILLA CROUSE: Now at the bottom of this document ELA93, there is place for signatures, but this document does not have any signatures, is that because the original was handed in?

MS NOMPILO NKOSI: Yes the original was handed in.

ADV LILLA CROUSE: Okay and who signed the document on behalf of the Department?

MS NOMPILO NKOSI: It was the former MEC Ms Mahlangu.

ADV LILLA CROUSE: Explain to the Court how that happened because it says head of the department Dr Bernie Selebano at the bottom of that letter, could you explain how that happened?

5**MS NOMPILO NKOSI**: We submitted the memorandum, she noticed that it wasn't her name at the bottom and-

ADV LILLA CROUSE: Just a moment, the "she" that you are referring to, is?

MS NOMPILO NKOSI: The former MEC.

ADV LILLA CROUSE: So she accepted the memorandum?

10**MS NOMPILO NKOSI**: And she refused. Ms Mahlangu refused to sign the memorandum saying this was not her name and we requested that she cancels the name and sign.

ADV LILLA CROUSE: Did you ask her?

MS NOMPILO NKOSI: Yes I did.

15**ARBITRATOR JUSTICE MOSENEKE**: Where was this? Where did you march?

MS NOMPILO NKOSI: To the Department of Health in Johannesburg.

ARBITRATOR JUSTICE MOSENEKE: And she was there in person?

MS NOMPILO NKOSI: Yes she was.

ARBITRATOR JUSTICE MOSENEKE: And you went up to her office, or where did
20you make contact with her?

MS NOMPILO NKOSI: She came to the foyer and then she came outside of the building.

ARBITRATOR JUSTICE MOSENEKE: With bodyguards naturally?

MS NOMPILO NKOSI: With her colleagues I would say, I didn't recognise any bodyguards.

ARBITRATOR JUSTICE MOSENEKE: So she came out of the building and how many of you were there, do you think? I mean the marchers, what is your estimate?

MS NOMPILO NKOSI: Not over 30.

ARBITRATOR JUSTICE MOSENEKE: And when she saw that the memorandum did not bear her name, she said I am not signing, this is not my name?

MS NOMPILO NKOSI: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And what did you do?

MS NOMPILO NKOSI: I told her that this document was written by us, so it can be amended at any time, so could she kindly cancel the name and write her name and sign.

ARBITRATOR JUSTICE MOSENEKE: And did she amend the one you gave her?

MS NOMPILO NKOSI: Yes she did Justice.

ARBITRATOR JUSTICE MOSENEKE: Where is the signed copy? Did she give it to you, or did she sign and take it away?

MS NOMPILO NKOSI: She signed her copy and she signed my copy and then we gave my copies to Section 27 for safekeeping.

ADV LILLA CROUSE: After the march, you received a document ELA96 from Doctor Selebano-

5**ARBITRATOR JUSTICE MOSENEKE**: Counsel I don't remember in what form did the response from the Presidency come?

ADV LILLA CROUSE: Maybe I could just go back there thank you Justice. When you sent an email to the President, we are just going back a bit, you were phoned by Portia?

10**MS NOMPILO NKOSI**: I sent an email to Portia copying in the President's office stating that we were coming to their offices for the march and then a gentleman, I cannot recall his name at this point, called me back and told me we cannot come to the presidential office to march there because there is protocol to be followed.

ARBITRATOR JUSTICE MOSENEKE: Did he phone you?

15**MS NOMPILO NKOSI**: He phoned me.

ARBITRATOR JUSTICE MOSENEKE: He didn't write an email back?

MS NOMPILO NKOSI: No he called me.

ADV LILLA CROUSE: And did you receive any formal reply on your complaint from the President's office?

20**MS NOMPILO NKOSI**: Not that I can recall no.

ARBITRATOR JUSTICE MOSENEKE: Now the contents of the email would be ELA92 would it be, the one of November the 4th?

ADV LILLA CROUSE: That is one of the emails Justice yes.

ARBITRATOR JUSTICE MOSENEKE: It's the second of the two.

5**ADV LILLA CROUSE:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Thank you I understand now, you may proceed.

ADV LILLA CROUSE: Ms Nkosi please turn to ELA96, ELA96 is a letter signed on the 11th of March 2016, it's got Dr Selebano's name, but it is signed by Mr
10Mosonoge, do you see that?

MS NOMPILO NKOSI: Yes I do.

ADV LILLA CROUSE: And that is in response to the march that you had, is that right?

MS NOMPILO NKOSI: That is right.

15**ADV LILLA CROUSE:** Now the bottom line to this response, is that the Department is saying that they are engaging the family and they are acting in terms of the policy-

ARBITRATOR JUSTICE MOSENEKE: I'm sorry, let's describe ELA96 a little fuller Counsel. What is it?

ADV LILLA CROUSE: Would you agree that it is a response on the Life Esidimeni termination march memorandum, that's the previous document that we referred to?

MS NOMPILO NKOSI: Yes I do agree.

ADV LILLA CROUSE: And just at the bottom of the last page, do you see the date there, could you read the date?

MS NOMPILO NKOSI: The 11th of March 2016.

ADV LILLA CROUSE: And in whose name is the letter?

MS NOMPILO NKOSI: Dr T.E. Selebano.

ADV LILLA CROUSE: And who signed the letter?

10 **MS NOMPILO NKOSI**: Dr Selebano.

ADV LILLA CROUSE: I am not sure it says PP there and it says Mosonoge, do you see that?

MS NOMPILO NKOSI: Yes Mosonoge yes.

ADV LILLA CROUSE: Yes now this was in response to your march, do you agree?

15 **MS NOMPILO NKOSI**: I do.

ADV LILLA CROUSE: And the content of this letter basically I think if one reads it carefully, states that the Department is engaging the family and that they are acting in the best interests of the mental healthcare users. Did you think that they were doing that?

20 **MS NOMPILO NKOSI**: No I do not.

ADV LILLA CROUSE: And why is that?

MS NOMPILO NKOSI: Because there are certain things that we would find out through via through the grapevine and others, through the media, they did move the patients before the end of the 31st, actually before the end of the 31st of March and 5they were not communicating with us.

ADV LILLA CROUSE: If we go to the conclusion at Paragraph 5, on the last page, Page 4 of that letter, do you see it?

MS NOMPILO NKOSI: Yes I do.

ADV LILLA CROUSE: There are some grammar mistakes, but I am going to read 10it to you. It says I wish that the families understand and note the extension in a positive manner as proof that the Department intends to place the mental healthcare users to well renovated NGO's and other hospitals. Did you believe that?

MS NOMPILO NKOSI: No I did not.

15**ADV LILLA CROUSE**: And could you tell us why?

MS NOMPILO NKOSI: Because Waverley NGO, the nature of an NGO, does not give the same level of care, the structure on its own, was not equivalent of what they used to live in at Waverley, so that on its own, is not true.

ADV LILLA CROUSE: Yes now eventually it was said that your brother Sizwe was 20going to be moved on the 11th of May 2016-

ARBITRATOR JUSTICE MOSENEKE: Just before you leave that letter, the letter claims a number of other things, look at Page 2 under the title discussion, you see the middle there, there is a recordal of your demands, you can see that on Page 2, after the sub-title discussion, the relatives concerned, organised a march, you can see that, to the Department and handed over a memorandum with two main demands as follows. Then it is recorded that a memorandum was received by the MEC for Health which you have already told us. Firstly the Department says they engaged you with a view to developing a plan in connection with the project progress. Did that happen?

10 **MS NOMPILO NKOSI:** I am not aware of that Justice.

ARBITRATOR JUSTICE MOSENEKE: And then they say that in bold letters, you can see that the Department admitted that it is not ready to close Life Esidimeni in a lawful and humane manner by 31st of March, that they conceded isn't it ultimately?

MS NOMPILO NKOSI: Yes they did.

15 **ARBITRATOR JUSTICE MOSENEKE:** Then you go over under 4 then they really set out the position of the Department. It starts with a policy, you did have discussions with them about the policy did you, the new policy that they say they would like to implement?

MS NOMPILO NKOSI: Not that I am aware of Justice.

20 **ARBITRATOR JUSTICE MOSENEKE:** And then they say in the letter to you, the Department is under severe financial constraints and the importance of complying

with the Auditor General cannot be undermined. What was that, did they tell you any more than that?

MS NOMPILO NKOSI: No, not that I know if. They did tell us that they were closing the institution because of finances, but other than that, no.

5**ARBITRATOR JUSTICE MOSENEKE**: And then they say that the new priority is to take all chronic users to either NGO's both day and residential and they must collect treatment from community clinics. Did they make that clear to you that that was their plan?

MS NOMPILO NKOSI: No they did not Justice.

10**ARBITRATOR JUSTICE MOSENEKE**: But did the letter reach you in any event?

MS NOMPILO NKOSI: Yes it did reach us the letter Justice, it did yes.

ARBITRATOR JUSTICE MOSENEKE: At some point, think about it, I am going to want you to give me your impressions of why they shut down Life Esidimeni, you must have views by now, you must have gathered whatever to come to some
15conclusion. I won't interrupt your Counsel now, let her continue, but I would like us to have that debate at the end, what do you make of all this.

ADV LILLA CROUSE: Thank you Justice. Ms Nkosi if you can please turn to ELA23? Now after the first move, Sizwe was moved away from Waverley is that right?

20**MS NOMPILO NKOSI**: That is right.

ADV LILLA CROUSE: ELA23 is a photograph of Sizwe. When was it taken?

MS NOMPILO NKOSI: It was taken before he left Waverley around about March 2015.

ADV LILLA CROUSE: And who took the photograph?

MS NOMPILO NKOSI: My sister did.

5**ADV LILLA CROUSE**: And how did you get this photograph?

MS NOMPILO NKOSI: I asked it from my sister.

ADV LILLA CROUSE: And the photograph shows a young man with a smile.

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Yes.

10**ARBITRATOR JUSTICE MOSENEKE**: What happened to his teeth?

MS NOMPILO NKOSI: He lost most of his teeth.

ADV LILLA CROUSE: You got a call on the 11th of May 2016 that they were going to move him. He ultimately wasn't moved on that day. Did you go to Waverley on the 11th of May?

15**MS NOMPILO NKOSI**: We did go to Waverley on the 11th of May.

ADV LILLA CROUSE: And what did you find there?

MS NOMPILO NKOSI: We actually found that Dr Manamela was there and she told us that we mustn't worry Cullinan is like a 5 star hotel.

ADV LILLA CROUSE: It's like a what?

MS NOMPILO NKOSI: Like a 5 star hotel.

ADV LILLA CROUSE: So your brother is going to a 5 star hotel?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And what else happened there on the day of 11th of May 52016?

MS NOMPILO NKOSI: We pretty much sat there the whole day and at the end of the day, they told us that he wasn't going to be moved on that day.

ADV LILLA CROUSE: Okay who are the "we" that you are referring to?

MS NOMPILO NKOSI: It was my mother, Joyce, Sipiwe's mom and myself.

10 **ADV LILLA CROUSE**: And you waited there for him to be moved on that day that is so?

MS NOMPILO NKOSI: It is so.

ADV LILLA CROUSE: And when was he moved?

MS NOMPILO NKOSI: The following day.

15 **ADV LILLA CROUSE**: Could you attend Waverley on the following day?

MS NOMPILO NKOSI: Yes we did.

ADV LILLA CROUSE: Who were the "we" that went the following day?

MS NOMPILO NKOSI: Again my mother, Sipiwe's mom and myself.

ADV LILLA CROUSE: And what happened there, this is now the 12th of May 2016, what happened there?

MS NOMPILO NKOSI: We got there, there were 2 buses and a vehicle, one of them was supposed to go to Cullinan and the other was supposed to go to 5Tsepong, the other one I am not sure. They got into the bus, they were dressed warmly, they had shoes and jackets on, it was, a cold day and Daphne was there, the social worker from Cullinan-

ADV LILLA CROUSE: Daphne Ndlovu?

MS NOMPILO NKOSI: Yes and we requested that we follow the bus to Cullinan so 10that Sizwe has an idea that we know what is happening and somehow everything will be okay. It was in a way to calm him down and try to make sure that he doesn't relapse from the move.

ADV LILLA CROUSE: And did you follow the bus?

MS NOMPILO NKOSI: Yes we did.

15**ADV LILLA CROUSE**: And you came to CCRC?

MS NOMPILO NKOSI: Yes we did.

ADV LILLA CROUSE: And what did you find there?

MS NOMPILO NKOSI: What we found there, was when we got in, Sizwe was brought out with other patients and he was admitted to CCRC and we spoke to the 20matron and she assured us that everything was going to be fine. She actually said that she also has a child who is disabled, so she understands.

ADV LILLA CROUSE: And you believed her?

MS NOMPILO NKOSI: Yes I did.

ADV LILLA CROUSE: Did you see whether Sizwe had a medical file with him?

MS NOMPILO NKOSI: We did see a file, a blue file with his picture on it that is how they were able to recognise who was who.

ADV LILLA CROUSE: Did you see the inside of this file at all?

MS NOMPILO NKOSI: I saw the first page of the file and on that first page, what I could see, was the picture of the patient and that was it.

ADV LILLA CROUSE: Okay, you left Sizwe there?

10 **MS NOMPILO NKOSI**: Yes we did.

ADV LILLA CROUSE: Did you return at a later stage?

MS NOMPILO NKOSI: Yes we did.

ADV LILLA CROUSE: When was that?

MS NOMPILO NKOSI: 10 days later.

15 **ADV LILLA CROUSE**: I want you to please look at ELA24, this is a picture taken by you, is that correct?

MS NOMPILO NKOSI: Correct.

ADV LILLA CROUSE: And you have taken the picture on the 22nd of May 2016?

MS NOMPILO NKOSI: Correct.

ADV LILLA CROUSE: And can you explain this picture to us please?

MS NOMPILO NKOSI: It is a picture of Sizwe sunburnt, miserable, no humming, humming was gone by then. When they brought him in, he wasn't wearing so many clothes, he had this yellow t-shirt on that was dirty and he has to send him back so that they can dress him warmly, it was a cold day.

ADV LILLA CROUSE: You say that he was miserable, why do you say that?

MS NOMPILO NKOSI: He looked miserable, he was dragging his feet, he had developed a tendency to sit with his legs on top of a chair folded and he would hug himself and he was very-

10 **ADV LILLA CROUSE**: Just stop there, just explain that motion again, you say you pull up your knees to your chest, is that what you are saying?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And then put your arms around your legs?

MS NOMPILO NKOSI: Yes.

15 **ADV LILLA CROUSE**: In a motion of keeping yourself tight?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Why would that be?

MS NOMPILO NKOSI: My guess would be he was miserable so he was trying to console himself, rocking himself.

ADV LILLA CROUSE: And you said sunburn, have you got any explanation for that?

MS NOMPILO NKOSI: He looked so dark in 10 days and his skin was cracking.

ADV LILLA CROUSE: And you say when you saw him, did he have shoes on?

5**MS NOMPILO NKOSI**: He did not have shoes on, nor a jacket, nor a jersey on, he had that yellow t-shirt with baggy track pants.

ADV LILLA CROUSE: And because it was a cold day, you said he should be dressed warmer than that?

MS NOMPILO NKOSI: Yes I did.

10**ADV LILLA CROUSE**: How was his general state further? Was he neat on himself? Was he un-kept?

MS NOMPILO NKOSI: He was un-kept, he was smelly he smelt as though he had dirtied himself, like he messed up on himself.

ADV LILLA CROUSE: And did you do anything about that?

15**MS NOMPILO NKOSI**: My mother took him to the bathroom and checked on him and there was nothing. He looked like he hadn't taken a bath ever since he got there.

ADV LILLA CROUSE: What did you do as a result of finding him in this way?

MS NOMPILO NKOSI: We complained.

20**ADV LILLA CROUSE**: To whom did you complain?

MS NOMPILO NKOSI: We complained to the matron, we complained to the nurses.

ADV LILLA CROUSE: And did you receive any explanation?

MS NOMPILO NKOSI: No we did not.

5**ADV LILLA CROUSE**: Ms Nkosi as a result of finding him in this way, you wrote an open letter to the Minister, is that right?

MS NOMPILO NKOSI: That is correct.

ADV LILLA CROUSE: It is attached to your affidavit ELA91. This is an email from you, is that right?

10**MS NOMPILO NKOSI**: Yes it is.

ADV LILLA CROUSE: And it says forwarded conversation, subject the open letter to the Minister, is that the heading?

MS NOMPILO NKOSI: Yes it is.

ADV LILLA CROUSE: And it's from your email address?

15**MS NOMPILO NKOSI**: I can't seem to find the letter, but I know the letter, yes.

ADV LILLA CROUSE: It's attached to ELA91, if you turn after your signature, you should find it. Do you have it now?

MS NOMPILO NKOSI: Yes I do have it.

ADV LILLA CROUSE: And the date of that open letter is 7 June 2016 do you see
20that?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And to whom is it sent?

MS NOMPILO NKOSI: It was sent to the Minister of Health, Aaron Motsoaledi.

ADV LILLA CROUSE: And how did you get the email addresses?

5**MS NOMPILO NKOSI**: Through the help of Section 27.

ADV LILLA CROUSE: And you in that email, you set out your findings at CCRC, is that right?

MS NOMPILO NKOSI: Yes I did.

ARBITRATOR JUSTICE MOSENEKE: But on the face of it, it doesn't seem to be
10directed at the Minister. Who is Radebe F and Setu M? Are they, people in the
Minister's office?

MS NOMPILO NKOSI: I would presume so Justice.

ADV LILLA CROUSE: As a result of this letter, you received feedback, is that so?

MS NOMPILO NKOSI: That is correct.

15**ADV LILLA CROUSE**: If you turn 2 pages-

ARBITRATOR JUSTICE MOSENEKE: But the answer is not complete, why do
you say you presume so?

MS NOMPILO NKOSI: I got the email address with the help of Section 27 I didn't
have Aaron Motsoaledi's email address.

ARBITRATOR JUSTICE MOSENEKE: I see thank you.

ADV LILLA CROUSE: Could you turn to the last page of ELA91 please? 2 days after sending the email, you received, or this letter is signed by 2 people. Could you explain this letter to us, what is this?

5**MS NOMPILO NKOSI**: This letter is feedback from the email that I sent.

ADV LILLA CROUSE: And from whom is it?

MS NOMPILO NKOSI: It says kind regards Manaka J.D. the Manager of CCRC and the CEO of CCRC at that point.

ADV LILLA CROUSE: And their letterhead is the Gauteng Province Health
10Cullinan Care and Rehabilitation Centre, do you agree?

MS NOMPILO NKOSI: I do agree.

ADV LILLA CROUSE: And they list the items in your letter of complaints and they say they will get back to you, is that right? Let us just go through the bullet points, which complaints of yours are they acknowledging?

15**MS NOMPILO NKOSI**: That my brother is dirty and he is wearing miss-fitting clothes that they sleep with worn out blankets in winter that they are allocated a very small environment to go and play outside. We couldn't bring my brother something to eat because they didn't have lockers like they did at Waverley, so they were acknowledging that as well.

20**ADV LILLA CROUSE**: And that your brother was being beyond sad?

MS NOMPILO NKOSI: Yes he was beyond sad and that the visiting room was in an appalling condition.

ADV LILLA CROUSE: You said a dirty table without chairs to sit on?

MS NOMPILO NKOSI: Yes.

5**ADV LILLA CROUSE**: In your letter, you also refer to a mattress on the bare floor, but they haven't responded to there being a mattress on the cold floor?

MS NOMPILO NKOSI: No they did not.

ARBITRATOR JUSTICE MOSENEKE: What I don't get is, in what form were your complaints to them to CCRC officials? Did you write to them?

10**MS NOMPILO NKOSI**: Yes I did, I wrote that letter.

ADV LILLA CROUSE: You wrote an open letter to the Minister?

MS NOMPILO NKOSI: Yes to the Minister.

ARBITRATOR JUSTICE MOSENEKE: So what we see here would be a rehash of some of the issues that you raised in the letter to the Minister?

15**MS NOMPILO NKOSI**: Yes.

ARBITRATOR JUSTICE MOSENEKE: I missed that, so you are saying to me in effect, the letter from the CEO and the quality assurance manager at CCRC was a response to the issues to the open letter to the Minister?

MS NOMPILO NKOSI: Yes it was.

ARBITRATOR JUSTICE MOSENEKE: Okay help me understand that? Let's look at your complaints, where do they start in the letter to the Minister? It might be the last paragraph is it? 10 days after being relocated from Waverley, my brother looks and smells as though he hadn't taken a bath ever since he arrived at Cullinan, he was wearing old dirty clothes, miss-fitting clothes, he was shaking and you enquired from the caregivers as to why he was shaking, there was no response, there are not enough blankets on the beds they sleep on and the one blanket they have, is too light and worn out to sustain them throughout the night, small sponge on the floor used as a mattress for a patient to sleep on and they leave patients on the cold concrete floor lying around. They are allocated a very small space in an open environment like animals in the zoo. Sizwe is beyond sad it is devastating nothing was done to prepare my brother. So the bullet points summarised in that letter, were in response to that paragraph?

MS NOMPILO NKOSI: Yes Justice.

15 **ARBITRATOR JUSTICE MOSENEKE:** I follow. Do you know how your letter to the Minister reached CCRC?

MS NOMPILO NKOSI: I do not know how it reached CCRC, but I also received a call from the matron saying that she cannot help me with Sizwe being over 100 km's away from us, the rest she will try.

20 **ADV LILLA CROUSE:** Ms Nkosi the question that you answered now, was actually, did you receive any response after this letter, isn't that so?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And your answer to have you received any response to CCRC's letter, is that the Matron phoned you?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And what did she say to you?

5**MS NOMPILO NKOSI**: She said she will try everything else, but she cannot help me with Sizwe being over 100 km's away from us, going to Cullinan.

ARBITRATOR JUSTICE MOSENEKE: And where was your home at the time?

MS NOMPILO NKOSI: Soweto.

ADV LILLA CROUSE: Now after this letter to the Minister and receiving a letter
10back from CCRC, did things go better at CCRC?

MS NOMPILO NKOSI: No they did not.

ADV LILLA CROUSE: What happened?

MS NOMPILO NKOSI: He kept on losing weight. He never got better, he kept on deteriorating.

15**ADV LILLA CROUSE**: Okay we will come back to that now. Could I ask you just to follow the timeline ELA94, now that is a memorandum to the Gauteng Department of Health from families of Life Esidimeni users and it is dated 9 June 2016, do you see that?

MS NOMPILO NKOSI: Yes.

20**ADV LILLA CROUSE**: What letter is that?

MS NOMPILO NKOSI: It's another memorandum we were marching again to the Department of Health.

ADV LILLA CROUSE: To the Department of Health office, where did you march?

MS NOMPILO NKOSI: To the Department of Health's office.

5**ADV LILLA CROUSE**: On the 9th of June 2016?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And how many people approximately was marching?

MS NOMPILO NKOSI: This time it was better, I would say about 60.

ADV LILLA CROUSE: About 60 people and this memorandum, was it read out?

10**MS NOMPILO NKOSI**: Yes it was read out by Lesogo.

ARBITRATOR JUSTICE MOSENEKE: But you marched from where to where?

MS NOMPILO NKOSI: We marched from [inaudible] Gerald Square to the Department's Office.

ADV LILLA CROUSE: And when she read out the letter, was there any official of
15the Department there?

MS NOMPILO NKOSI: Yes they were.

ADV LILLA CROUSE: Did anybody accept this memorandum?

MS NOMPILO NKOSI: Yes it was accepted and signed.

ADV LILLA CROUSE: And do you know who accepted and signed it?

MS NOMPILO NKOSI: I am not quite sure because at that point I didn't know them by name, so I would have to guess and say it was Dr Selebano, it was a male person.

ADV LILLA CROUSE: And your complaint in this letter, in the first paragraph, you say that the Department has been moving loved ones and you were complaining that that happened without alerting the families and that the families had to track them down.

MS NOMPILO NKOSI: Correct.

ADV LILLA CROUSE: Now the second paragraph says that we have made extensive efforts to engage the Department, is that so, did you do that?

MS NOMPILO NKOSI: Yes we did do that.

ADV LILLA CROUSE: It says the Department has treated us with indifference and indignity, did you feel that way?

MS NOMPILO NKOSI: We did feel that way.

ADV LILLA CROUSE: Why?

MS NOMPILO NKOSI: Because as much as they said they would move patients by June, they would be very careful with patients and they would try and do it in a human manner this time around, but that was not the case. We would ask the staff, we would ask the security, I would pretty much ask everybody that I could ask at the time and they would tell us that patients are being moved, so they were lying.

ADV LILLA CROUSE: And you also say in that paragraph, it has failed to put in place, a plan to protect the rights and safety of our loved ones, did you believe that?

MS NOMPILO NKOSI: Yes I did, I still do.

ADV LILLA CROUSE: And then you say many of our loved ones are relapsing and dying as a result? Was that information that you had?

MS NOMPILO NKOSI: Yes that was the information that I had.

ADV LILLA CROUSE: And then you say we demand change and then you've got bullet points, is that right?

MS NOMPILO NKOSI: Yes.

10 **ADV LILLA CROUSE**: And then if you turn the page, there are demands that must be seen to and you demanded the response by 15 June 2016, is that right?

MS NOMPILO NKOSI: It is right.

ARBITRATOR JUSTICE MOSENEKE: What did they say to these demands? This is June 2016. In fact, this march was a day after the letter from the CEO of CCRC
15 isn't it?

MS NOMPILO NKOSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: If I look at the paperwork, their letter was a day before the 9th of June, it was on the 8th of June, so you had been to CCRC, you had seen your brother, you knew there was trouble coming and you write this- what
20 did they say to this, you want the profile of each NGO where family members have been and will be placed, accreditation documents of each NGO and their readiness

to provide appropriate care and treatment, details of the funding of NGO's, Department's plans for supporting and monitoring and evaluating the NGO's, proper individual consultation, each family to be provided with assessment conducted of their loved ones, a toll-free number that family members can call to establish where 5patients have been placed. Was there any comeback on this?

ADV LILLA CROUSE: Justice if I could help?

ARBITRATOR JUSTICE MOSENEKE: You are going to get us there?

ADV LILLA CROUSE: Yes if you could just please move to the next document Ms Nkosi?

10**ARBITRATOR JUSTICE MOSENEKE**: It just startles me that it is so on point and it was clear even then in June 2016, very well.

ADV LILLA CROUSE: Yes can you go to ELA97, now this is a document that has the name Dr Manamela and a date 15 June 2016 at the bottom of Page 8 and 15 June was the date that you had given the Department to reply to your demands in 15the march is that right?

MS NOMPILO NKOSI: That is right.

ADV LILLA CROUSE: Now let us just go to the front of that document ELA97, it has the Gauteng Province Health logo at the top of the page, is that right?

MS NOMPILO NKOSI: Yes.

20**ADV LILLA CROUSE**: And the subject is memorandum submitted by family members of the mental healthcare users admitted at Life Esidimeni facilities and it

says that the purposes of this document, is to respond to your demands. It says this, I am not saying they responded to your demands, I am just saying this is the purpose for which they have written this, would you agree?

MS NOMPILO NKOSI: I would agree.

5**ADV LILLA CROUSE**: Then there is background information to the contract, if you turn the page, just before the memorandum, do you see on Page 2, the last paragraph before the heading the memorandum towards the bottom of the page?

MS NOMPILO NKOSI: Yes I do.

ADV LILLA CROUSE: It says regardless of the efforts by the Department, some of 10the families and other stakeholders, presented with dissatisfaction of the ending of the contract relationship and took the Department to the media court and also toy-toyed and sent memorandums, do you see that?

MS NOMPILO NKOSI: I do see that.

ADV LILLA CROUSE: What do you say to that? What do you say that speaks to 15the attitude with which you were received?

MS NOMPILO NKOSI: We did toy-toy, we did take our matters to the media, all they are saying it is true and we had our reasons for doing that.

ADV LILLA CROUSE: But it says that some of the family holders and stakeholders, it creates the impression that you were on a frolic of your own, do you 20agree with that?

MS NOMPILO NKOSI: Explain frolic?

ADV LILLA CROUSE: You were just being against the Department, that is what this letter creates, or I will argue that.

MS NOMPILO NKOSI: Yes it does create that impression.

ADV LILLA CROUSE: Then it goes to the concerns raised by yourselves, Page 3 with the first concern, it says moving patients without alerting the families and it seems to me that Dr Manamela, is, wanting, you to find out from Life Esidimeni where your families were moved from.

MS NOMPILO NKOSI: Yes because they couldn't tell us where the families were moved from.

10 **ADV LILLA CROUSE**: So the Department is not taking responsibility?

MS NOMPILO NKOSI: Yes they are not.

ADV LILLA CROUSE: But it says they will try to work with you. The next one is the heading their loves ones have been at Life Esidimeni for a long time and the answer in the middle of that paragraph, Dr Manamela says that the Department 15 paid for all users in Life Esidimeni and the Department noted that the services are no longer affordable and opted to a better manageable resources at an affordable cost. Did you agree with that?

MS NOMPILO NKOSI: I did not agree with that, I still do not agree with it.

ADV LILLA CROUSE: Then the next heading deals with family claim to have made 20 extensive effort to engage the Department but treated with indifference and indignity and it seems to me that she is saying that yes you had engaged with them. The

next heading, the Department repeatedly lied to the families. The Department denies lying to you. The next heading at the bottom of Page 3, says the Department operated in secret, that was your complaint and the answer to that is, that the Life Esidimeni contract termination plans were shared in family meetings and also copied and forwarded to the committees, so they are denying that there was any secrecy. What was your feeling towards that?

MS NOMPILO NKOSI: There was secrecy I still feel that even in this very day, there still is secrecy Justice.

ADV LILLA CROUSE: Why do you say so?

10**MS NOMPILO NKOSI**: Because they did not share information with us. We would find out from the nurses, from the security guards who were scared at that point, to share information with us that patients were being moved.

ADV LILLA CROUSE: The next heading speaks to the fact that the Department failed to put a plan to protect the rights of their loved ones and they just say they 15shared the plan with you. Then the next heading- do you want to say anything on that?

MS NOMPILO NKOSI: I don't recall seeing any plan.

ADV LILLA CROUSE: The next heading is that many of the loved ones are relapsing and the answer to that is that they've got no such information and they 20would welcome such information. Did you engage as a family committee, did you engage the Department with the complaints?

MS NOMPILO NKOSI: We did engage the Department with the complaints.

ADV LILLA CROUSE: Did Dr Manamela know about those complaints?

MS NOMPILO NKOSI: She knew about the complaints.

ADV LILLA CROUSE: So is this paragraph true?

5**MS NOMPILO NKOSI**: It is very true.

ADV LILLA CROUSE: Is it true that they engaged you and that they are not aware of the information that people were relapsing?

MS NOMPILO NKOSI: We did have meetings, but the thing is, on those meetings, we would agree about something and then the next thing you hear on the media
10that something is being done.

ARBITRATOR JUSTICE MOSENEKE: Well they basically say, the response there, look at it, is we don't know that any of the patients have relapsed and if you know, you can share that with the Department. You are welcome to contact the Department if you know families that have relapsed, or patients that have relapsed.

15**ADV LILLA CROUSE**: You said you have shared the relapses as a family committee?

MS NOMPILO NKOSI: Mainly Sizwe Nkosi yes.

ADV LILLA CROUSE: And the next paragraph goes to-

ARBITRATOR JUSTICE MOSENEKE: But by then, you had written your letter and they had responded and that they are investigating the issues you are raising and she, Dr Manamela, writes that we know nothing about it.

MS NOMPILO NKOSI: Yes.

5**ADV LILLA CROUSE**: My question to you here was that was Dr Manamela telling the truth here or not?

MS NOMPILO NKOSI: No she was not telling the truth.

ADV LILLA CROUSE: Now if we go to the next paragraph, it says many of their loved ones are dying, that was, your, complaint and her response is that the
10Department is trying it's best to look after the patients, we have no death reports except the only 2 out of 1442 patients placed. These 2 were sick and on chronic general illness treatment. Then she says 1 death is 1 too many and cannot be taken lightly, but her response is that these were sick people and that is why they died. Were you in agreement with that?

15**MS NOMPILO NKOSI**: No I do not agree with that.

ADV LILLA CROUSE: Then she deals with under bullet 1-

ARBITRATOR JUSTICE MOSENEKE: Before you go to bullet 1, we know now how many people had died by June 2016 isn't it?

MS NOMPILO NKOSI: Yes Justice.

20**ARBITRATOR JUSTICE MOSENEKE**: You write to her and say patients are dying and she says well I know of only 2 and those were ill.

MS NOMPILO NKOSI: That is true Justice.

ARBITRATOR JUSTICE MOSENEKE: Isn't it quite startling because the numbers show that and we can look at it, I don't have it at hand, but it was easily around between 60 and 70 patients if you add them up at that time.

5**MS NOMPILO NKOSI**: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And she says no I know of only 2 and she is head of this project.

ADV LILLA CROUSE: We go to bullet 1, promise to place loved ones nearer to their homes and she says well this has been honoured except where there were no
10families and where there were not appropriate services closer.

ARBITRATOR JUSTICE MOSENEKE: Is that true, you were there, you drove behind the bus to Cullinan and your brother was still taken to a place 100 km's away from Zola in Soweto?

MS NOMPILO NKOSI: That is correct Justice.

15**ARBITRATOR JUSTICE MOSENEKE**: So this is patently untrue isn't it in your case?

MS NOMPILO NKOSI: It is Justice.

ADV LILLA CROUSE: Then the next bullet point there, was that users are moved without the family giving their choice on where they should go and the answer there,
20is the placement plan's emphasis that before the mental healthcare users are placed, the families must be informed of the place by the social workers from Life

Esidimeni facilities and when they are received at the NGO's and the hospital, the families are informed by the Department or the NGO's. Now you complained that you weren't consulted and you weren't given a choice where they should go and she says but you were told. What do you say to that?

5 **MS NOMPILO NKOSI**: We were not given a choice yes. As to being told, we were not told by the Department, the Department only addressed us on the 29th of January 2016.

ADV LILLA CROUSE: Okay at the bottom of Page 4 is a heading, it says when questioned on placement, the family claimed to be threatened by either taking their
10 loved one and care for them, that was one of your complaints you weren't allowed to question the placement.

MS NOMPILO NKOSI: That is correct.

ADV LILLA CROUSE: And her response is that the Department's priority is to place all mental healthcare users either in hospitals or NGO's if the family cannot
15 take them and then she speaks to a survey that they have done. That wasn't really an answer to your complaint was it?

MS NOMPILO NKOSI: No it was not.

ADV LILLA CROUSE: But then she also says that no family was forced to take patients, is that true?

20 **MS NOMPILO NKOSI**: I wouldn't say that.

ADV LILLA CROUSE: Well there are 59 people missing, so we would want to know what happened to them if their family wasn't forced to take them, where are they?

MS NOMPILO NKOSI: I don't know where the patients are, I really don't know. The thing is, if I may, we were told that if you are not happy with the place that they taking your loved one to, you are more than welcome to take your loved one.

ARBITRATOR JUSTICE MOSENEKE: Well essentially they said we are going to do it this way, if you don't like it, get out of here.

MS NOMPILO NKOSI: Correct Justice.

10 **ARBITRATOR JUSTICE MOSENEKE**: Take him or her and you go and look after him or her yourself.

MS NOMPILO NKOSI: Exactly Justice.

ADV LILLA CROUSE: And that speaks to the attitude of the Department, do you agree?

15 **MS NOMPILO NKOSI**: I agree.

ADV LILLA CROUSE: Page 5 the next heading is your claim that the NGO's are not safe, medically, sound and/or even possible for them to take care of their loved ones, as they are not qualified. You felt this way as family members?

MS NOMPILO NKOSI: We did.

ADV LILLA CROUSE: Now Dr Manamela's claim is that all the NGO's are assessed and accredited before they can place and receive any mental healthcare users. Now we know that wasn't true.

MS NOMPILO NKOSI: Correct.

5**ADV LILLA CROUSE**: The NGO's that does not meet the requirements are disqualified, the NGO's that received mental healthcare users have met the specific requirements as on the audit forms and we haven't seen the audit forms at all. Have you seen audit forms before mental healthcare users were sent to NGO's?

MS NOMPILO NKOSI: No I have not.

10**ADV LILLA CROUSE**: Was it ever discussed with you that there were such forms?

MS NOMPILO NKOSI: No there was no such discussion.

ADV LILLA CROUSE: Then you complain in bullet 2, that the Department is not telling the family where their loved ones are going and many spent weeks not knowing where the Department took their loved ones despite the best effort, a
15number of us still do not know. The Department is simply not available to engage us even when they claim in the media, they are doing so, that was your complaint, is that right?

MS NOMPILO NKOSI: That is right, that was our complaint.

ADV LILLA CROUSE: And the answer to that, is the Department has been
20meeting with the family committee representing the family, the Department has a

procedure to be followed when transferring the users which also has a portion to inform the families, is that an answer at all to your complaint?

MS NOMPILO NKOSI: To me, no, it's not an answer.

ADV LILLA CROUSE: Did family members complain that they were looking for their mental healthcare users?

MS NOMPILO NKOSI: Yes they did.

ARBITRATOR JUSTICE MOSENEKE: You see, she, Dr Manamela insisted that Life Esidimeni should have done this. Dr Galagala comes to us and says they never gave us lists of NGO's, so we just did not know where the people have been taken to. What do you want to say about that? Did Life Esidimeni know where people have been taken to, in your experience as you engaged with these tragic events?

MS NOMPILO NKOSI: It is really painful Justice because at some point, they claimed that their phones were not working, that is why they were not able to communicate with the families. Today we don't know where so many of our loved ones are and it is hurtful because the families spent so much money running around trying to find their loved ones and honestly they don't know where they are, we don't know where they are. We have tried, we are still trying and it is difficult.

ARBITRATOR JUSTICE MOSENEKE: But did you understand the situation to be that Life Esidimeni are the ones who knew where your loved ones were to be taken to, or were they rather fetched from there in buses and a variety of vehicles?

MS NOMPILO NKOSI: I understand when they say Life Esidimeni should know because they cared for the patients and initially when you hand over somebody, I would think you would want to know where they are going as an organisation and the second one is?

5**ARBITRATOR JUSTICE MOSENEKE**: Well we know at that point, Dr Galagala says they demanded lists of NGO's and they were never given to them.

MS NOMPILO NKOSI: No we were never given a list of NGO's. Instead it was Life Esidimeni who tried and put a list of NGO's for us to go and check around because at that point, we didn't know what was going to happen, so they are the ones who
10tried and put a list of NGO's for us to go and check where we can take our loved ones to. At that point, the Department hadn't communicated with us anything.

ADV LILLA CROUSE: Under bullet 3, your complaint is that the Department said they wouldn't close the facilities before the end of June 2016, but Waverley was closed at the end of May and Randfontein on the 15th of June without consultation
15and Dr Manemela's answer is that Life Esidimeni was experiencing challenges in keeping the services open and they then asked that the 68 mental healthcare users would be transferred to Randfontein complex and Randfontein will continue until the 30th of June 2016. Was that an answer to your complaint?

MS NOMPILO NKOSI: This was not satisfactory to my complaint.

20**ADV LILLA CROUSE**: Why?

MS NOMPILO NKOSI: Because we agreed that there should be a humane lawful way to move patients. We even asked how, do they plan on preparing the patients

about the moves so that they don't relapse to reduce the stress and the capacity of them relapsing and actually on that, we were told that we must prepare them ourselves, so this was a disappointment, because we did not agree to this and this happened.

5 **ADV LILLA CROUSE**: Now the last heading on Page 5 says the Department promised the new facilities will be the same or better than Life Esidimeni, but did not keep its promise. Was that your complaint?

MS NOMPILO NKOSI: Yes it was my complaint.

ADV LILLA CROUSE: The answer to that is, it's indeed a priority of the
10 Department to provide the appropriate services of high quality to all mental healthcare users, therefore all NGO's were to be assessed by a team of mental health services including psychiatrists and engineers for infrastructure. The engineers, psychiatrists and other multi-disciplinary team members evaluated the NGO's before the placement and then she says many of- so she said no that's not
15 true, we evaluated and then your complaint was many of the facilities do not have medications and is unable to access their critical health medication. Was that a complaint of yours?

MS NOMPILO NKOSI: It was a complaint of ours.

ADV LILLA CROUSE: And her response is well they are collecting it from the
20 district clinic and there are no shortages reported. Was that the truth?

MS NOMPILO NKOSI: No it was not the truth.

ADV LILLA CROUSE: Then your other complaint was that NGO's unlike Life Esidimeni, do not provide clothing to patients and we provide but is stolen, our loved ones are cold in strange places. Was that a complaint?

MS NOMPILO NKOSI: Yes it was our complaint.

5**ARBITRATOR JUSTICE MOSENEKE**: That's a poetic line. Our loved ones are cold in strange places, it expresses pain, but it sounds like poetry.

MS NOMPILO NKOSI: I cannot dispute that.

ADV LILLA CROUSE: Now Dr Manemela's response was that it is heart breaking that Life Esidimeni did not issue the mental healthcare users with clothing they were
10using even when advised to do so and sent most mental healthcare users without the necessary attire. What is your response to that?

MS NOMPILO NKOSI: The patients, the ones that I saw when I was there observing when I could, literally got into buses with the clothes that they on, shoes, jackets, that was it.

15**ADV LILLA CROUSE**: Most NGO's bought new clothes and shoes for the patients who did not have their clothes. Did you see any evidence of that?

MS NOMPILO NKOSI: Anchor for instance, we got there and ja, actually the answer to that is yes.

ADV LILLA CROUSE: Anchor bought clothing?

MS NOMPILO NKOSI: No they did not buy clothing I heard your question wrong. We had to buy clothing, because they did not have clothing. We had to donate clothing because they did not have clothing.

ADV LILLA CROUSE: And then Dr Manamela's next sentence is that most of these 5patients were also wearing their own clothes at Life Esidimeni as this was allowed. She continues, NGO's are also allowing family members to supply mental healthcare users with clothes if they can. The NGO's has to resemble a homely environment than institutions. It's not really an answer to your question do you agree?

10**MS NOMPILO NKOSI**: I do agree, it's not really an answer.

ADV LILLA CROUSE: The next heading is that the NGO's didn't provide activities in stimulating the patients. That was a complaint of yours?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And the surprising answer of Dr Manamela is that all NGO's 15were advised to develop rehabilitation programmes within 2 weeks of receiving the mental healthcare users. So there was nothing at the NGO's and then she says however physical exercises are done every day. Did you find any evidence of that?

MS NOMPILO NKOSI: No.

ADV LILLA CROUSE: Then your complaint was that the NGO's demanded 20payment from families, was that true?

MS NOMPILO NKOSI: I cannot comment on this one because I did not encounter an NGO whereby they demanded payment from the families personally.

ADV LILLA CROUSE: But the families complained to the family committees about that, is that so?

5**MS NOMPILO NKOSI:** Yes.

ADV LILLA CROUSE: If one turns the page to Page 7, the heading at the top of that page, says the Department promised to provide a list of NGO's together with the process it used to approve, we do not know where our families are going and the criteria and the process that was a complaint?

10**MS NOMPILO NKOSI:** Yes it was.

ADV LILLA CROUSE: Now Dr Manamela says well they can't do this because the documents will be confidential, is that the response that you got?

MS NOMPILO NKOSI: Still getting.

ADV LILLA CROUSE: And then she goes through your list of demands which I am
15not going to work through, so all in all, you asked at your second march, you asked for feedback and would I be correct that you didn't receive satisfactory feedback at all?

MS NOMPILO NKOSI: You are 100% correct.

ADV LILLA CROUSE: Now we are just following the timeline still, if one goes to
20ELA25, if you could go there please, now this is a few days after Dr Manemela's letter to you, what does ELA25 depict?

MS NOMPILO NKOSI: It's a picture of my brother.

ADV LILLA CROUSE: And what's happening on the picture?

MS NOMPILO NKOSI: My mother is cutting his nails, he has lost a lot of weight, he pretty much looks like a skeleton walking. At that point, he had completely drawn-
5he wasn't humming, we weren't even getting eye contact, it was bad, it was really bad.

ARBITRATOR JUSTICE MOSENEKE: Well the picture says it doesn't it?

MS NOMPILO NKOSI: Yes it does.

ARBITRATOR JUSTICE MOSENEKE: You just need to look at ELA23, look at 24,
1024 is still tolerable, but 25, it just unbelievable that it is the same person.

ADV LILLA CROUSE: Where was this taken?

MS NOMPILO NKOSI: It was taken at Cullinan.

ADV LILLA CROUSE: And did you complain?

MS NOMPILO NKOSI: Yes I did.

15**ADV LILLA CROUSE**: To whom did you complain?

MS NOMPILO NKOSI: At this point, I had to go and see the CEO Ms Matilda
Malaza.

ADV LILLA CROUSE: And what happened in that conversation?

MS NOMPILO NKOSI: She couldn't even give me an opportunity to speak to
20explain why I was there, to complain why I was complaining. She said she didn't

see anything wrong with Sizwe and she says that the only thing that she could do for us, was to weigh him.

ADV LILLA CROUSE: To weigh him?

MS NOMPILO NKOSI: Yes.

5**ADV LILLA CROUSE**: And how would that help?

MS NOMPILO NKOSI: I don't know.

ADV LILLA CROUSE: Did you ask her?

MS NOMPILO NKOSI: I told her that since you are not willing to do anything about the situation, we are going to weigh him together, may I please have some of the
10staff members weigh him in front of me to make sure that his weight does improve and that was a mission to get her to weigh him.

ADV LILLA CROUSE: Did she offer any further services than weighing?

MS NOMPILO NKOSI: No.

ADV LILLA CROUSE: And would weighing have helped him?

15**MS NOMPILO NKOSI**: Not that I know of.

ADV LILLA CROUSE: Did you complain about the quality of the food?

MS NOMPILO NKOSI: I did complain about the quality of the food.

ADV LILLA CROUSE: And?

MS NOMPILO NKOSI: She assured me that they were eating plenty food, they were eating more than enough, they were eating all the time.

ADV LILLA CROUSE: Now Sizwe stayed there until after the Ombud's report came out is that right? When was he moved out of CCRC?

5**MS NOMPILO NKOSI**: April this year 2017.

ADV LILLA CROUSE: And after the taking of that photograph until April this year, did things go better or did it, go worse?

MS NOMPILO NKOSI: They continued to deteriorate.

ADV LILLA CROUSE: And you continued to complain?

10**MS NOMPILO NKOSI**: Yes.

ADV LILLA CROUSE: And where is he now?

MS NOMPILO NKOSI: He is at Waverley in Germiston where he was originally.

ADV LILLA CROUSE: And how do you find his condition now?

MS NOMPILO NKOSI: He is improving, he is getting better.

15**ARBITRATOR JUSTICE MOSENEKE**: Where is the picture, I want to see the picture now.

MS NOMPILO NKOSI: It's on my phone Justice.

ARBITRATOR JUSTICE MOSENEKE: You must print it and give it to Counsel, because he really looks so emaciated, you can hardly see his eye balls.

MS NOMPILO NKOSI: I have seen him, not the picture Justice.

ARBITRATOR JUSTICE MOSENEKE: Okay you have seen the real thing, but he is fighting, he is almost on the verge of losing his life, I mean he is very thin, all bones and you contrast it with the two pictures where you can see his eyes, he had bright eyes, brown obviously in the centre and with the white background, but you can hardly see that, all gone.

MS NOMPILO NKOSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Well you must give that to your Counsel, I would like to see the picture now.

10 **MS NOMPILO NKOSI**: I will give her the picture.

ADV LILLA CROUSE: Ms Nkosi has he gained weight?

MS NOMPILO NKOSI: He is picking up weight.

ADV LILLA CROUSE: Has he started humming again?

MS NOMPILO NKOSI: He is humming again.

15 **ADV LILLA CROUSE**: So the stress on your family is a little bit less now?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: I am going to speak to you about the effect that this had on your family. Let's start with your mother. What effect did this whole move have on her?

MS NOMPILO NKOSI: She got sick, she is still getting sick, she complains of pains in her body, she goes to the doctors a lot and she misses work.

ADV LILLA CROUSE: How old is she now, do you know?

MS NOMPILO NKOSI: She is turning 55 years old next June.

5**ADV LILLA CROUSE**: And mentally, the effect that it had on her?

MS NOMPILO NKOSI: She couldn't concentrate at work.

ARBITRATOR JUSTICE MOSENEKE: She misses work a lot she often stays home because of her un-wellness.

MS NOMPILO NKOSI: Yes.

10**ADV LILLA CROUSE**: Your sister?

MS NOMPILO NKOSI: My sister especially last year, she was not doing well at school.

ADV LILLA CROUSE: Her academic achievement went down?

MS NOMPILO NKOSI: Yes.

15**ADV LILLA CROUSE**: And Ms Nkosi yourself, what is your occupation?

MS NOMPILO NKOSI: I am a make-up artist for film production, I am a freelancer.

ADV LILLA CROUSE: And how do you get your work?

MS NOMPILO NKOSI: Through word of mouth, I get called in.

ADV LILLA CROUSE: People have your cell phone number and they call you when they need you?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And what effect did your involvement in the Life Esidimeni 5marathon project or the Gauteng marathon project, what effect did this have on your business?

MS NOMPILO NKOSI: Well it's non-existent now.

ADV LILLA CROUSE: Why is that?

MS NOMPILO NKOSI: Because I became inconsistent. They would call me and I 10wouldn't be able to go to work because I had to choose certain meetings that I had to attend, certain marches that I had to convene, certain things that had to do with Sizwe's wellbeing that took priority at the time, so I was unavailable which made me inconsistent, I lost a lot of clients due to that.

ADV LILLA CROUSE: And what is left of your business now?

15**MS NOMPILO NKOSI**: It is non-existent.

ADV LILLA CROUSE: Emotionally how did this affect you?

MS NOMPILO NKOSI: I would say really, really bad, I am not what I used to be.

ADV LILLA CROUSE: As a family, did you express your sadness to each other?

MS NOMPILO NKOSI: Yes we did, we still do.

ADV LILLA CROUSE: I am going to ask you about what specific contact you had with specific people in the Department. If I could start with the MEC, the former MEC, you met her at the march, the first march, is that right?

MS NOMPILO NKOSI: No we met her on the 29th of January 2016 when she came to Waverley to address the families.

ADV LILLA CROUSE: That was before the first march?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And what did she say at this meeting?

MS NOMPILO NKOSI: She promised us that everything was going to be okay, she told us that at the end of the day, she doesn't have a mentally ill patient in her bloodline, these were our loved ones so we had to take care of them. We asked what measures were put in place to make sure that our loved ones do not relapse and she told us that we had to make sure that they do not relapse, we must talk to them or something we must do something.

ADV LILLA CROUSE: And the next meeting you had with the MEC after January meeting?

MS NOMPILO NKOSI: It was after the march. I can't quite recall the dates.

ADV LILLA CROUSE: And what happened at that meeting?

MS NOMPILO NKOSI: What I can tell you Justice, is that through these meetings, we would discuss something and only to find out that what we agreed upon, would

not manifest and we would hear something else through the media or through the staff that was working at Life Esidimeni at the time.

ADV LILLA CROUSE: Did you also attend a meeting where Section 27 SADAG and Dr Talatala was with the MEC in October 2016?

5**MS NOMPILO NKOSI**: Yes I did.

ADV LILLA CROUSE: What happened at that meeting?

MS NOMPILO NKOSI: Honestly I can't tell you because she was the one who spoke and-

ARBITRATOR JUSTICE MOSENEKE: She, MEC Mahlangu?

10**MS NOMPILO NKOSI**: The former MEC Mahlangu yes and to be honest with you Justice, I don't recall anything that she was saying at the time.

ADV LILLA CROUSE: Did you experience this as a sympathetic person or not?

MS NOMPILO NKOSI: There was no sympathy, none whatsoever Justice.

ARBITRATOR JUSTICE MOSENEKE: And did SADAG at that meeting, make
15their point that this project is likely to be unsuccessful it might endanger lives of patients who were dependent on mental healthcare?

MS NOMPILO NKOSI: Yes SADAG, Section 27, SASOP, South African Health Federation, yes they did.

ARBITRATOR JUSTICE MOSENEKE: And what did the MEC say?

MS NOMPILO NKOSI: She assured us that everything was going to be fine they were on top of things.

ARBITRATOR JUSTICE MOSENEKE: But she also told you that the project was going to continue, did she?

5**MS NOMPILO NKOSI**: Yes.

ARBITRATOR JUSTICE MOSENEKE: In other words, the placement project, the marathon project was going to go on and it will all be fine, is that what she said?

MS NOMPILO NKOSI: Yes Justice.

ADV LILLA CROUSE: Can we Ms Nkosi move on to your contact with Dr
10Manamela? Could you explain what happened in the meeting in the first week of
February 2016, why did you go to her office?

MS NOMPILO NKOSI: I went to her office to let her know that we will be coming to
march to hand over a memorandum and a petition to her office and she called me
up to the offices as she mentioned here whose office it was Chief something I can't
15quite remember. I found her in a meeting with her superior and her superior stated
that Dr Manemela was at the time, busy updating her on the marathon project and I
stated why I was there-

ARBITRATOR JUSTICE MOSENEKE: Who was the superior?

MS NOMPILO NKOSI: It started with Chief, it was Chief something, I'm not sure, it
20was a lady, Black lady, short hair, short, dark.

ARBITRATOR JUSTICE MOSENEKE: Okay you don't know her name?

MS NOMPILO NKOSI: No she didn't give me her name.

ARBITRATOR JUSTICE MOSENEKE: Okay.

MS NOMPILO NKOSI: And I stated why I was there and we talked a bit about the marathon project and she admitted that her plan was that by the end of March, they should be done relocating the patients. We also spoke about the funds. I asked her a question, because at the time, I was conducting my own research and I knew that the nurse at Takalani costs more than a nurse at Waverley and I asked her as to how was she planning on saving funds. She completely lost it, she lost her temper, she told me I had better stop what I was doing or else. Then the chief woman called her into order.

ARBITRATOR JUSTICE MOSENEKE: She denied it, you heard her?

MS NOMPILO NKOSI: Yes I did.

ARBITRATOR JUSTICE MOSENEKE: What do you think triggered her anger?

MS NOMPILO NKOSI: I think it was me touching on how exactly, were, they planning to save money, because save money and provide the same level of care that was expected as the patient received at Waverley and I did not understand because the nurses at Takalani cost way more like around about R13 to R15 an hour and the one at Waverley cost around about R4 an hour, so it was a huge difference and I couldn't comprehend as to how exactly, were, they planning on saving funds.

ARBITRATOR JUSTICE MOSENEKE: And how did she express her anger? We couldn't ask her that, she denied it.

MS NOMPILO NKOSI: She said I had better stop what I am doing or else.

ARBITRATOR JUSTICE MOSENEKE: She was shouting at me, shouting at me, 5stalking to me strongly saying stop what you're doing or else.

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Justice I see it's very close to tea-time, I've got about 10 minutes or so left for this witness or maybe a little bit less.

ARBITRATOR JUSTICE MOSENEKE: I think you keep rolling until the end.

10**ADV LILLA CROUSE**: Thank you Justice, Ms Nkosi there was a third march as well?

MS NOMPILO NKOSI: Yes I convened that one as well.

ADV LILLA CROUSE: Please turn to ELA95, it is headed Life Esidimeni families demand action and accountability, do you see that?

15**MS NOMPILO NKOSI**: Yes I do.

ADV LILLA CROUSE: And it's 2 pages, is this, the document that was handed over on the third march?

MS NOMPILO NKOSI: Yes it was read by Christine.

ADV LILLA CROUSE: And that was on the 27th of October 2016?

20**MS NOMPILO NKOSI**: Yes.

ADV LILLA CROUSE: It was read out from where did you march firstly?

MS NOMPILO NKOSI: From again [inaudible] Gerald Square to the Department of Health's offices.

ADV LILLA CROUSE: And how many people, were, there this time?

5**MS NOMPILO NKOSI**: The turnout was great, it was great, people came through, we had a lot of support from a lot of people and stakeholders. I cannot place a number it was a lot of people.

ADV LILLA CROUSE: Now there are 2 quotes, one from the Bible and 1 from the Quran and underneath it says Johannesburg 27 October 2016, we are here today
10because at least 38 and in all likelihood many more of our cherished loved ones, are dead, thousands more are in danger. Was that the reason for the march?

MS NOMPILO NKOSI: Yes it was the reason for the march.

ADV LILLA CROUSE: And if we go down just a few paragraphs, the shortest paragraph says the Department ignored our warnings and continues to do so,
15people died and continue to suffer as a result. Is that how you felt?

MS NOMPILO NKOSI: Yes it is how we felt.

ADV LILLA CROUSE: And then you made demands?

MS NOMPILO NKOSI: Yes we did.

ARBITRATOR JUSTICE MOSENEKE: And that's how it was wasn't it? By then
20October 2016, many mental healthcare users had died.

MS NOMPILO NKOSI: Yes Justice.

ADV LILLA CROUSE: Now you ask in Paragraph 7 on Page 2 of 2, that you want a written response by the 3rd of November 2016. Now just to put this into perspective at this stage, the Ombud was already busy with the investigation is that true?

MS NOMPILO NKOSI: Yes it is true.

ADV LILLA CROUSE: Are you aware of any response that you've received?

MS NOMPILO NKOSI: No because I know we asked the lists, to this very day, we are still asking for the lists. We asked for the regulating guidelines as to how were they assessing and licensing their NGO's and we never received that.

ADV LILLA CROUSE: Okay one of the things that you demanded in Paragraph 1 is that the Department and the former MEC accept responsibility for these deaths. Has that happened up to this stage?

MS NOMPILO NKOSI: No.

15 **ADV LILLA CROUSE**: And you already spoke to the plan that you wanted. You didn't march after that day again?

MS NOMPILO NKOSI: No.

ADV LILLA CROUSE: Why is that?

MS NOMPILO NKOSI: Because we were waiting for the Ombud's report to come out and then we were going to take it from there.

ADV LILLA CROUSE: I am going to speak to you about redress and closure, but before I do so, Justice has asked-

ARBITRATOR JUSTICE MOSENEKE: I think we should adjourn, those are weighty things and in any event, we are going to have to hear your other colleagues and 5hear Ms Nkosi in the end in any event. I think we are going to adjourn now because I think there is a bit of a way to go before we bring closure to this part of the evidence. Shall we adjourn now until midday?

ADV LILLA CROUSE: Thank you Justice.

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SESSION 2

ARBITRATOR JUSTICE MOSENEKE: Thank you, please be seated, Counsel?

ADV LILLA CROUSE: Thank you Justice, the witness must just be reminded that she is still under oath.

15**ARBITRATOR JUSTICE MOSENEKE**: Yes you are still sworn to tell the truth and nothing but the truth.

MS NOMPILO NKOSI: Of course Justice.

ADV LILLA CROUSE: Thank you. Ms Nkosi you provided us with a photograph which is in front of you and marked ELA105 do you see that?

20**MS NOMPILO NKOSI**: Yes I do.

ADV LILLA CROUSE: It's a photograph of your mother and your sister and your brother, is that right?

MS NOMPILO NKOSI: That is right.

ADV LILLA CROUSE: When was this photograph taken?

5**MS NOMPILO NKOSI**: Last month.

ADV LILLA CROUSE: And you can see that he has picked up quite a lot of weight from the previous November photograph is that so?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: And you say he is humming again?

10**MS NOMPILO NKOSI**: Yes he is.

ADV LILLA CROUSE: Ms Nkosi we were coming to-

ARBITRATOR JUSTICE MOSENEKE: Yes he does look good I must say and I have seen the journey, not as good as when he was originally at Waverley, but he looks much healthier and it is good to see.

15**MS NOMPILO NKOSI**: Thank you Justice.

ADV LILLA CROUSE: We are going to speak to redress and closure now, but before we get there, Justice Moseneke asked you whether you had any idea of why the contract was ultimately closed. Do you have any thoughts on that?

MS NOMPILO NKOSI: It would be speculation. I don't think it was because of
20money, I really don't think so. If I were to speculate, I would say the relationship

between Life Esidimeni and the Department of Health went sour and I am not even sure if it's the Department of Health because I think this is bigger than the Department of Health, I think they got orders from the government because I was ignored. So it kind of gives an idea, a perception that they knew about the move before the move happened-

ARBITRATOR JUSTICE MOSENEKE: You know by now I don't like they-

MS NOMPILO NKOSI: Our government the State government knew about the move because I tried to communicate with them and they never got back to me to a point whereby I made calls to the Presidential Office and I spoke to Portia and she says she would get back to me and until this very day, she hasn't got back to me. So I think they knew and I don't think it was because of money. I would also like to know what exactly, was the reason behind it.

ARBITRATOR JUSTICE MOSENEKE JUSTICE MOSENEKE: If not money, what was the reason for terminating the contract?

MS NOMPILO NKOSI: I would also like to know that Justice.

ADV LILLA CROUSE: Is that one of the items that you have on your list for closure that you want to know what happened?

MS NOMPILO NKOSI: Yes it is.

ADV LILLA CROUSE: What else would bring closure and redress do you think?

MS NOMPILO NKOSI: I would like to know what would happen after the contracts that Life Esidimeni has with the Department has expired, what would happen to our

loved ones then. Are we going to find ourselves in the very same position that we are in now. We would like to know what is what moving forward. Communication, if they can better the communication between the families about what is happening, what they plan on doing when it comes to our loved ones and not find things out through the media or the grapevine, that would be great and counselling for my mother especially and my sister and myself of course. Money would be lovely so that we can improve the environment at home so that when my brother visits and when he does relapse and throws things to the neighbour's house, it doesn't hit the neighbour's kids, to improve the state of our environment so that it is more suitable for him.

ADV LILLA CROUSE: Let us just interrogate that, what are you saying? What do you want to do to your house?

MS NOMPILO NKOSI: To improve the environment, so that the environment is more conducive for Sizwe.

15 **ADV LILLA CROUSE**: Okay let's start, what is wrong with the fence?

MS NOMPILO NKOSI: Its way too low that is why he can throw things to the neighbour's and the neighbours have kids and their kids might get hurt. We would like to change the gate so that it is more secure, things like that have him home more often rather than visiting him at Waverley.

20 **ADV LILLA CROUSE**: Okay are you saying Ms Nkosi if your fence and your gate was better, that you would be able to have him home more often?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: Yes is there anything else you were thinking of why you would need money?

MS NOMPILO NKOSI: To jumpstart my business.

ARBITRATOR JUSTICE MOSENEKE: Which is not entirely unfair, because it was destroyed by your activism isn't it?

MS NOMPILO NKOSI: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: I am amazed at how much you and others did in drawing attention to this catastrophe which was about to happen. I mean truly from October 2015 and onwards, just the amount of energy and of keeping families who were affected together and generating a momentum where you talk to the government regularly and all the memoranda that was handed in yesterday and today, you must be right, it must have wiped out your business?

MS NOMPILO NKOSI: It did Justice.

ARBITRATOR JUSTICE MOSENEKE: Why did you do it? Why were you this big activist on this issue?

MS NOMPILO NKOSI: I was worried about my brother's life I didn't want to lose my brother Justice. My mother wouldn't have handled it.

ARBITRATOR JUSTICE MOSENEKE: And the suggestion that you didn't love him, you didn't want to look after him and you don't want to assume responsibility about him, how does that sit with you?

MS NOMPILO NKOSI: It hurts.

ARBITRATOR JUSTICE MOSENEKE: It might hurt and be true, but is it true?

MS NOMPILO NKOSI: Of course not.

ARBITRATOR JUSTICE MOSENEKE: It's not true?

MS NOMPILO NKOSI: It's not true.

5**ARBITRATOR JUSTICE MOSENEKE**: And what is your response to the fact that just nobody listened to you? You put a lot of energy, almost for a year up to October 2016 when the Ombud was appointed, nobody seems to, at least those, in power, didn't seem to do much about your grievances?

MS NOMPILO NKOSI: It is heart breaking Justice.

10**ARBITRATOR JUSTICE MOSENEKE**: In other words, I'm saying despite your activism, you didn't seem to change the course of events. Some patients were set to die or to be treated quite uncaringly like your brother and that went ahead despite your activism.

MS NOMPILO NKOSI: Yes it did.

15**ARBITRATOR JUSTICE MOSENEKE**: And why do you think that was so? Why did the officials not respond to your many demands, your many petitions, your marches?

MS NOMPILO NKOSI: I think they did not care, I think it's related with the stigma of mental patients that are mentally disabled, whoever is associated with you, the
20chances are that their IQ capacity is limited, things like that, they didn't care Justice.

ARBITRATOR JUSTICE MOSENEKE: But after that, I go back to my initial question, if it was not money, what was it to achieve? Why would you dismantle Life Esidimeni which seemed to be working reasonably well and then we end up where we did at NGO's that were thoroughly dysfunctional?

5**MS NOMPILO NKOSI:** In all honesty Justice, it's a mystery, I don't know, I would like to know, I would really like to know.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV LILLA CROUSE: Thank you, Ms Nkosi can you speak to us about travelling costs from your home to CCRC?

10**MS NOMPILO NKOSI:** I think only my mother can be able to answer that question, but it was quite costly, because going there, is over 100 km's an hour and there is a toll gate.

ADV LILLA CROUSE: And there is a toll gate?

MS NOMPILO NKOSI: Yes.

15**ADV LILLA CROUSE:** And do you know the cost of the toll gate?

MS NOMPILO NKOSI: The last time I checked, it was around about R20 coming in and R20 going through.

ADV LILLA CROUSE: And you had to go often?

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: I made a note here on my consultation, you said when this thing, the Life Esidimeni moves was anticipated, your life stopped, remember saying that to me? Can you explain this?

MS NOMPILO NKOSI: I had to choose between my life and the life of my brother. I had to make sacrifices whether I go to work or I go to meetings. I had to abandon certain clients because I had to do research and find out what was going on, things like that. My social life crumbled, it was not only the work life, it was the all-rounder, like life literally stopped, because my mother was so devastated, she wasn't functioning properly and I wasn't really earning money at that point, so we all had to depend on her pay cheque. Life changed as we knew it, it stopped we had to prioritise and see what was most important here, which was saving Sizwe's life, making sure that he lives.

ADV LILLA CROUSE: Ms Nkosi thank you very much for testifying, we really appreciate the time that you've taken in this project and for coming to the arbitration, thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. The one thing you haven't talked about is your later role in the family's committee. When I met the parties before this arbitration agreement was finalised, you were one of those who were present, so you were a member of the committee weren't you?

MS NOMPILO NKOSI: I would say that and it took me a while to admit that I am a family committee. At the time, I disputed that, I didn't want to be associated and I didn't want to be called a family committee, because this was bigger than a family

committee Justice, because there are certain members who are not categorised under a family committee, but they have done a lot. They haven't been mentioned but they have done a lot, like [Marungwe] like Lesogo, like Grace, a lot, Ivan Tebogo, a whole lot of people.

5 **ARBITRATOR JUSTICE MOSENEKE**: And what motivated the cohesion of the committee, the family committee, what kept it together, focused?

MS NOMPILO NKOSI: I would have to say our stakeholders helped a lot, because as individuals, we don't see eye to eye, we would sometimes clash on our opinions, but we had support from our stakeholders.

10 **ARBITRATOR JUSTICE MOSENEKE**: Who were your stakeholders?

MS NOMPILO NKOSI: SADAG, [inaudible] Chambers, Section 27, others are still in Section 27, others are no longer with Section 27, SASOP, Talatala, South African Federation of Health, that would be Leon, Bernard, who am I missing out, Bernard I think is from Wits as well, so ja. I know I am leaving out other people, family
15 members as well.

ARBITRATOR JUSTICE MOSENEKE: And the committee had a lot to do with setting up of this arbitration, is that correct?

MS NOMPILO NKOSI: It is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Why, what were you looking for?

20 **MS NOMPILO NKOSI**: In setting up the arbitration, we were looking for justice.

ARBITRATOR JUSTICE MOSENEKE: And what form do you think that justice ought to take?

MS NOMPILO NKOSI: We would like to see those who are responsible for this mess to be held accountable proper imprisonment and sadly the lives that were lost, they cannot be retrieved and the time-

ARBITRATOR JUSTICE MOSENEKE: Well don't you accept Dr Manemela's explanation that these were human errors? They were not crimes, but human errors?

MS NOMPILO NKOSI: It was negligence from the word go before they moved the patients, we have no medical background, we are not medical practitioners, but we knew, we foresaw it and yet, in the Department of Health, in their positions, they didn't see it, they didn't listen to reason, they didn't listen to us. How is it something that is normal that was supposed to happen, that was going to happen, it wasn't happening before, so no, I am not accepting that.

ARBITRATOR JUSTICE MOSENEKE: So you say it's not just a human error or mistake? It is recklessness and negligence?

MS NOMPILO NKOSI: Yes I would agree with you 100% there Justice.

ARBITRATOR JUSTICE MOSENEKE: But why wouldn't they care, why wouldn't the officials care?

MS NOMPILO NKOSI: It's a mystery, really I do not know.

ARBITRATOR JUSTICE MOSENEKE: So what else under the rubric of justice, are you looking for? Remember where I started, you were one of those who were the architects of the arbitration process that participated with the State to reach an agreement for an arbitration. What else was the committee looking for?

5**MS NOMPILO NKOSI**: People died Justice, our people, our loved ones and when I say loved ones, I mean it we loved them and they had to be buried. People borrowed money Justice to bury their loved ones it would be lovely if they would be compensated back. They lost lives you cannot retrieve a life Justice. I lost my time, you cannot pay me back with my time, you cannot retrieve my time and in losing my 10time, I lost a whole lot that is attached to my time. I would like to leave it up to you as you are sitting there appointed to do that, I would like to leave it up to you to decide that Justice.

ARBITRATOR JUSTICE MOSENEKE: Beyond money, what else would get us the closure?

15**MS NOMPILO NKOSI**: Right now-

ARBITRATOR JUSTICE MOSENEKE: I am asking you these questions because you have been one of the leaders, so I would like to benefit from your thinking?

MS NOMPILO NKOSI: Right now, recently, we had a summit, we spent over 4 months going to meetings with our resources again, planning a summit on the 10th 20of October, it's World Mental Health Day and our theme this year was break the silence, break the stigma. We were hoping that we would have awareness campaigns already and people are getting bonuses and they will be drinking their

money out which normally happens and alcohol is one of the main barriers and we would like awareness campaigns. Initially they should be out by now, but like I said, it is something that has been happening and still happening. It is only on Monday that we heard on the news that-

5 **ARBITRATOR JUSTICE MOSENEKE**: Campaigns driven by civil society, or civil society and government?

MS NOMPILO NKOSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Please go ahead?

MS NOMPILO NKOSI: And rather than hearing things on the media, could we
10 please be told what is happening, what is to be expected. Another thing is, we are still waiting for the regulating guidelines that we asked for on the third memorandum that was submitted on the 27th of October, to make sure moving forward, that when licences are issued, it is through these regulations and it is way over 2 months now, over 3 months, where we haven't received any regulations or received any
15 response, nothing, it is quiet and after all of this that we have been through that has brought us here, I would think it would be one of the priorities you know but we haven't heard anything, so we would like the guidelines to be issued.

ARBITRATOR JUSTICE MOSENEKE: Those are guidelines on licensing of facilities that would provide mental healthcare?

20 **MS NOMPILO NKOSI**: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes and what else do you think would fall under the rubric of justice? You talked about awareness, you talked about global and domestic awareness you talked about licensing and caring to ensure that institutions are adequate. You've told me about certainty around current healthcare facilities with private entities like where your brother is and what is, their fate going into the future. In the arbitration agreement, there is reference to a memorial.

MS NOMPILO NKOSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: In remembrance of this tragedy. Talk a little about that?

10 **MS NOMPILO NKOSI**: There is supposed to be a memorial, a stone especially I think it's [inaudible] Freedom Park in Pretoria, right now I can't quite remember.

ARBITRATOR JUSTICE MOSENEKE: I am really asking what you want, to see happening, there?

15 **MS NOMPILO NKOSI**: Can they please honour that as well? They said they would honour it, we haven't heard anything about it ever since they promised to honour it. Will they please get onto it.

ARBITRATOR JUSTICE MOSENEKE: How do we- what should be done in relation to the survivors like your brother, besides the money, besides being kept at the facility with a level of security of tenure, what else do you think ought to be done
20 by way of redress to survivors in particular?

MS NOMPILO NKOSI: They also need counselling, because they have been traumatised.

ARBITRATOR JUSTICE MOSENEKE: And how do we assure them security of tenure in their stay or should we?

5**MS NOMPILO NKOSI:** Yes we should, but how, that's the question.

ARBITRATOR JUSTICE MOSENEKE: In other words, how do we assure them that they won't again be bundled out of there and put on buses and taken somewhere else? Do you have any thoughts on that?

MS NOMPILO NKOSI: Right now, what I know Justice is what happened, should
10never ever happen again and I know for a fact, that we still have patients that are very far away from their loved ones and we have complained about that and it is still falling on deaf ears. Could we please be heard? We cannot have a loved one who is over 100 km's away from you, you need to see them they need to see you. You need to give them hope, they need love, it goes a long way. So if we can have our
15loved ones closer, bring those who are still left behind at Cullinan closer to their loved ones that would be great.

ARBITRATOR JUSTICE MOSENEKE: And how do we activate families who are not close to their loved ones, to be close? There was much song and dance about the fact that something like a third of the patients, well almost up to half sometimes,
20Dr Manemela was talking about 600 to 700 patients who had no home, contact details. I don't know whether it is true or not, but how do we breach that gap so that- and the consequences of some of this they claim, is bodies that would be in the

mortuary for months and months and months and some have not been identified up to now. There is obvious need to have families coming closer and closer and I am not suggesting many families are not, but there are some which are not.

MS NOMPILO NKOSI: It might be because of their financial situation Justice 5[inaudible – Xhosa] so I don't know how we can move around that, but it is something that needs to be looked at.

ARBITRATOR JUSTICE MOSENEKE: Maybe the government should have a special campaign to try and identify every single person in an institution having more resources and just track down and have tracing programmes so that they can 10actually have details, contact details and re-unite patients with families.

MS NOMPILO NKOSI: Yes I agree 100%.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV ADILA HASSIM: Thank you Justice, good afternoon Ms Nkosi.

MS NOMPILO NKOSI: Good afternoon Mam.

15**ADV ADILA HASSIM:** I would like to test a proposition with you based on your direct experience in activating in relation to this issue and the meetings you had with government and the proposition is this, that the mental healthcare users were treated as a group that there was a sort of blanket approach that was taken to the manner in which mental healthcare users were dealt with, rather than seeing them 20as each and every one as an individual rights bearer. That's the proposition I want to test with you, do you understand what I'm saying, so rather than treating each

mental healthcare user as an individual entitled to rights, there was a blanket approach and I will tell you why I think this and if you look at ELA97, so the first thing on ELA97 I would like to point out in regard to this proposition is on Page 3. In the middle of the page, but it is also in other documents and responses from the Department, the Department pleads financial constraints and lack of resources and that the services are no longer affordable. Did Dr Manamela or Dr Selebano or the MEC ever explain to you if there were financial constraints, why this programme had to be cut rather than other programmes that don't affect the rights and delivery of services?

MS NOMPILO NKOSI: No they did not, they did not explain.

ADV ADILA HASSIM: Did you ask them?

MS NOMPILO NKOSI: Yes the families asked, not me in particular, but one of the family members asked. It was on the 29th of January 2016.

ADV ADILA HASSIM: So there were financial constraints and the Department had to cut costs and that is one of the important reasons they have given for why they had to move the mental healthcare users and they did so on mass.

MS NOMPILO NKOSI: Yes.

ADV ADILA HASSIM: The second aspect of ELA97 is on Page 4, again related to this blanket approach to mental healthcare users, so on Page 4 under the heading that says promise to place their loved ones nearer to their home, it says the Department has tried its utmost best to have mental healthcare users closer to their home and honoured the promise, except for mental healthcare users who have no

families and where there are no appropriate services closer to the family. So the rights of those mental healthcare users would be affected right, they would be infringed, because they would not be closer to the families.

MS NOMPILO NKOSI: We went to visit my brother often while he was at Life Esidimeni, we were there, they knew us and yet he was moved to Cullinan, over 100 km's away, so I don't see how this really applies because it is not true.

ADV ADILA HASSIM: So there are two things and one I accept what you are saying, that this is not true the statement, but even if it were true, the approach is to say this is the programme we have, some mental healthcare users might face 10 problems, we might not be able to do it in the best way for some, but that's the just way it is, do you understand what I'm saying?

MS NOMPILO NKOSI: I hear what you're saying, but I'm not sure if I understand what you're saying.

ADV ADILA HASSIM: So what I'm trying to test, the proposition I am trying to test, 15 is that the government took an approach to cutting this programme in which mental healthcare users, this cohort of mental healthcare users were treated as a group, so we have a plan and we are going ahead with the plan and if some fall by the wayside, well then some fall by the wayside, rather than checking in respect of each and every person who is being transferred, whether they are being properly cared 20 for.

MS NOMPILO NKOSI: Like you said, it was a blanket kind of setup where they just treated everybody the same, it was not an individual, it was mental health patients.

ARBITRATOR JUSTICE MOSENEKE: Yes Counsel is really asking you was it your impression that government took care to look at every individual case and to honour their right of access to healthcare, individually?

MS NOMPILO NKOSI: No, that was not my impression.

5**ARBITRATOR JUSTICE MOSENEKE:** In a customised way?

MS NOMPILO NKOSI: No that is not, what happened Justice.

ADV ADILA HASSIM: The last example I would like to put to you, is on Page 6 of ELA97 and it's in relation to again the middle of the page, under the heading a number of facilities do not provide activities and stimulation to patients. This was
10one of the concerns that was raised by the families and the response from the Department was that all NGO's were advised to develop rehabilitation programmes within 2 weeks of receiving the mental healthcare users. So it's another indication of this group approach, this blanket approach, some mental healthcare users may be lucky enough to find themselves in a place where they are receiving
15rehabilitation and others not. Is that the impression that you got?

MS NOMPILO NKOSI: Yes it was the impression that I got. If I may elaborate, in all honesty, there were no activities or anything to stimulate the patients. There was none at Anchor, there was none at Siyabadinga, there was definitely none at Takalane, there was none. That is why we complained about it, it was non-existent.
20Even SADAG offered to help but nothing happened.

ADV ADILA HASSIM: And were those available and stimulation available at Life Esidimeni?

MS NOMPILO NKOSI: Yes they were.

ADV ADILA HASSIM: What form did they take those programmes?

MS NOMPILO NKOSI: They play netball until this very day, they run around, they do artwork, crafting and normally they have open days we are having one on the 9th of December where they will sell those days. Even though some of those things don't make sense, we buy them because they have been made by our loved ones.

ADV ADILA HASSIM: So those kind of programmes were not available at the NGO's, that is what you're saying?

MS NOMPILO NKOSI: That's what I'm saying Justice.

10 **ADV ADILA HASSIM**: And Dr Manamela said that the NGO's were advised to develop those programmes within 2 weeks. Do you know after having admitted mental healthcare users, whether they did so?

MS NOMPILO NKOSI: No I do not know. No, they didn't, there were no programmes of such, there were no stimulating programmes. I remember I even 15 referred Dorothy to SADAG, Casey offered and I referred Anchor to it. I don't know what happened, but I know that it got closed, so maybe she was still going to approach Casey which never happened, but nothing.

ADV ADILA HASSIM: So would you be in agreement with me with this proposition that they were treated as a group, the mental healthcare users, not as individual 20 rights bearers?

MS NOMPILO NKOSI: I do agree.

ADV ADILA HASSIM: The second impression I get and I would like to know whether that was your experience, is that the tone of the responses to the families' concerns, suggests that the officials resented your involvement.

MS NOMPILO NKOSI: Yes.

5**ADV ADILA HASSIM**: But that directly contradicts what they say in these responses to you when they say they have tried to engage the families, they have engaged at several meetings, they have encouraged the families' to bring complaints to them. How do you square that?

MS NOMPILO NKOSI: That is not true, that is not true Justice. We would have 10meetings and agree on something only to find out that you are left on the ledge by yourself because we agreed on that and now it's not happening and you are hearing about it through somebody, a security guard and a nurse, somebody who cleans or through the media, but they were not communicating with us. We would go to the meetings, it is one of the things that actually made me not to go so much to these 15meetings because nothing was materialising out of it.

ADV ADILA HASSIM: Was it your impression that they were intolerant of the descent from family members?

MS NOMPILO NKOSI: We annoyed them we got that impression that we are annoying them.

20**ADV ADILA HASSIM**: And is that because you wanted to stop the transfer and they did not want to stop the transfer?

MS NOMPILO NKOSI: Yes.

ADV ADILA HASSIM: Was that at the heart of it? So the meetings that you had, again I just want you to confirm that I am also reading it correctly, you had these meetings that the responses to you speak about family engagement, but it seems that they were on two different planets. The officials were meeting to say this is what we are doing and this is how we are going to do it and on the family side, it was no, we are not participating in that, we want you to stop. We want you to assure us that you are actually not going to continue with the project until certain things are in place.

10 **MS NOMPILO NKOSI**: Correct.

ADV ADILA HASSIM: So when they say they are engaging with you, they weren't engaging with you about your concerns, they were informing you?

MS NOMPILO NKOSI: Yes they were informing us.

ADV ADILA HASSIM: There is a difference between meeting with you to tell you what is going on and to provide information, there is a difference between that and a meaningful consultation would you agree?

MS NOMPILO NKOSI: Yes and being told what is going to happen, whether you want it to happen or not, but this is what's going to happen, yes there is a difference between the two.

20 **ADV ADILA HASSIM**: And what category would this fall into for you, these meetings?

MS NOMPILO NKOSI: We were told what was going to happen and what they said was going to happen, happened, regardless of how many times we pleaded with them, it happened.

ADV ADILA HASSIM: So on that same note, can you have a look at Page 7 of 5ELA97, right at the top of the page, it says the Department promised to provide a list of NGO's together with the process it uses to approve, we do not know where our families are going and the criteria and the process. So that statement is the statement of the families concern and then what follows, is the response and the response is, the processes were discussed with the family committee and were also 10informed that the documents were confidential. Was any explanation given to you as to why it was confidential to know which NGO's were being used by the government for services?

MS NOMPILO NKOSI: We were told that they cannot disclose another patient's information to us, because it was illegal.

15**ADV ADILA HASSIM**: But this concern is about providing a list of NGO's together with the process, it meaning I assume the Department uses to approve those NGO's. Was an explanation given to you as to why that was confidential?

MS NOMPILO NKOSI: I don't know because on the 27th of October again, we asked for some of these things that we have been asking for and they were not 20providing them.

ADV ADILA HASSIM: And lower down the page under number 2, the request for the accreditation documents for the NGO's and the readiness of the NGO's, the

response that is given to you, is that the accreditation documents are the legal documents of the Department and can only be issued with the NGO consent, otherwise the family can only get these documents through legal process. What was your response to that?

5 **MS NOMPILO NKOSI**: This was unacceptable and it was tiring, so pretty much it was like banging the same wall over and over again and not getting the response that we needed.

ADV ADILA HASSIM: So in other words, the Department was saying to you, you are coming to us for information, we can't help you to get this information, go to
10 court and get it from us.

MS NOMPILO NKOSI: Exactly.

ARBITRATOR JUSTICE MOSENEKE: Whilst we are right there with NGO's, sorry Counsel, what was your impression, what was in it for the NGO's? Why would they have wanted to do it? We are talking about the Department for a while, but why
15 would the NGO's want to do it, to receive people for whom they were not properly equipped?

MS NOMPILO NKOSI: I would be speculating Justice. Am I allowed to speculate?

ARBITRATOR: Well I would like your impression, I mean you have lived with the process for long and you have been to the NGO's, the committee has been going to
20 NGO's to look at the conditions of some of them. Could you sense why NGO's would do what is bound to be a disastrous enterprise?

MS NOMPILO NKOSI: The only explanation that makes sense to me as I'm speculating Justice, is that they were in it for money. There is no other sensible reason, I cannot think of anything that makes sense to me, that why would you put other people's lives in danger, you are not equipped, qualified to perform such a task and yet, you take such vulnerable people and torture them, because in my view, it was torture, unless you are benefiting something from it, why else would you do it and if you were to benefit, what would you benefit from it?

ARBITRATOR JUSTICE MOSENEKE: So you think they did it for money?

MS NOMPILO NKOSI: I think so Justice.

10 **ARBITRATOR JUSTICE MOSENEKE**: Counsel?

ADV ADILA HASSIM: Thank you Justice, it follows neatly from the question of the Justice, at number 3, you asked for a detail of the NGO funding through government subsidies and other sources. The response from Dr Manamela was the following, was that these are confidential documents of the NGO's and cannot be divulged without the NGO's consent or legal process. What is your response to that?

MS NOMPILO NKOSI: This is what we got most of the time when we were to request something.

ADV ADILA HASSIM: But why would government funding to NGO's be confidential? It is part of our transparent democracy, we must know how government spends its money, spends our money.

MS NOMPILO NKOSI: Yes.

ADV ADILA HASSIM: And we now know that the NGO's received certain amounts roughly in the region of R112 per patient and that the disability grants were used by the NGO's, so we know that now, but you were not informed of that at the time.

MS NOMPILO NKOSI: Yes.

5**ADV ADILA HASSIM**: That document ELA97 is dated 15 June 2016 and in that document, the Department acknowledges only 2 deaths and they say those 2 deaths arose because those patients were sick and on a chronic illness general treatment, but the Ombud has told us in his supplementary report, which is ELA57 and you don't really need to go there, but I just want to for the record, point out that
10according to the Ombud, in June 2016, by June 2016, 19 people had died, not 2.

MS NOMPILO NKOSI: Yes.

ADV ADILA HASSIM: So either the Department didn't know about these deaths, which in itself is a problem because they should have been aware of the deaths, or they did know about it and were being less than candid in this response to you.

15**MS NOMPILO NKOSI**: Yes.

ADV ADILA HASSIM: And then finally I want to point out that in the same document, the Department informs you that the NGO's, I just want to find the relevant reference, so on Page 5 for example, your concern was the following, that the NGO's are not safe, medically sound and/or even possible for them to take care
20of loved ones as they are not qualified and the response from the Department is the following, all the NGO's are assessed and accredited before they can place and receive any mental healthcare users. The NGO's who do not meet requirements,

are disqualified. The NGO's that received mental healthcare users have met the specific requirement as on the audit form. Is it correct that you were not provided with those audit forms or the assessments or accreditations right because it was confidential?

5 **MS NOMPILO NKOSI**: It was confidential like everything else.

ADV ADILA HASSIM: What we know now, is that in July 2016, so a month after this response is written to the families, they are at least two audit reports, one relating to Sharma House and one to Precious Angels which show very dismal conditions at the NGO's, including such things as pet food being stored in the rooms
10 where patients sleep, petrol being stored with food and the like. It's there in the record, but that was a month after you got that response.

MS NOMPILO NKOSI: Yes.

ADV ADILA HASSIM: And what do you make of that? Could it be true that all of those NGO's were properly accredited and a month later, collapsed into
15 dysfunctionality?

MS NOMPILO NKOSI: No it's not true, they were not properly monitored it's not true Justice.

ADV ADILA HASSIM: And how does that make you feel that you were told this in June when the likelihood is that the NGO's like Sharma House and Precious Angels
20 were already known to be in appalling conditions?

MS NOMPILO NKOSI: Certain things they can make one to be angry because we did say some of our colleagues here, they exhausted their mileage, petrol and time going to assess these NGO's and they came back and they briefed us, they told us Justice that they were not in good condition and others after the patients were 5moved, for instance at Anchor where my brother was moved without us being informed about it, there was no stove for instance, the kitchen was so small, it was not the right size for a kitchen to prepare a meal for so many people. So it is things that we saw, it is not hearsay, we saw it, we voiced it out and nothing was done about it. It was hurtful, it made one to be very angry and we felt really, really 10powerless.

ARBITRATOR JUSTICE MOSENEKE: Because the official line was that they are fine, these are NGO's are okay.

MS NOMPILO NKOSI: That was the official line for everything Justice, everything was fine and yet people died people were tortured. We had to stop doing what we 15normally do on a daily basis to attend to certain things that they were not willing to attend to, because they were not willing to hear us, still not willing to hear us Justice.

ARBITRATOR JUSTICE MOSENEKE: Even to this day, the person who was in charge of the unit, one Doctor Manamela comes here and says it was all fine, I 20licenced them, my people checked these NGO's and they were fine. That is still her position before these arbitration proceedings.

MS NOMPILO NKOSI: Like I said Justice until this very day, everything is fine, we are not being heard until today Justice, it is not something that happened then and it was corrected. It is still happening now as I am talking to you.

ADV ADILA HASSIM: Thank you Justice, I don't have any further questions for the witness. I would just like to thank you Ms Nkosi for your activism, your spirit and for making time today.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Groenewald?

ADV DIRK GROENEWALD: Thank you very much Justice. Justice we just have a few questions. I would like to touch on the last issue that the Justice has raised with you. You have heard the evidence of Dr Manamela, am I correct?

MS NOMPILO NKOSI: Yes you are correct.

ADV DIRK GROENEWALD: We also know Mam from your testimony, that you have intricate knowledge about this whole marathon project and you engaged the Department and so on. So my question is simple, in your opinion, would you say that Dr Manamela took responsibility for her actions? You have listened to her evidence and I am asking whether or not you think she took responsibility for the role that she played in the Gauteng mental health marathon project?

MS NOMPILO NKOSI: No I do not think so Justice.

ADV DIRK GROENEWALD: Would you say from listening to her evidence, would you say that she was honest about the facts and what happened?

MS NOMPILO NKOSI: No I do not think so Justice.

ADV DIRK GROENEWALD: Now at the end of the day Mam, we are here amongst others, to see to it that the families find closure. Now after hearing the evidence of Dr Manamela, would you say that you and the other family members are closer to finding closure?

5 **MS NOMPILO NKOSI:** No, not at all, it actually aggravated us.

ADV DIRK GROENEWALD: Now Mam there was also other evidence led here at the arbitration amongst others by Ms Ndlovu in respect of CCRC. Now she said those patients there, they received 4 meals a day, their linen was changed they had bedding and so on, what is your response to that testimony?

10 **MS NOMPILO NKOSI:** I know for a fact that that is not true Justice.

ADV DIRK GROENEWALD: Mam I want to also put a proposition-

ARBITRATOR JUSTICE MOSENEKE: And that ties in with your long email where you describe the conditions?

MS NOMPILO NKOSI: And pictures.

15 **ARBITRATOR JUSTICE MOSENEKE:** And pictures where you found your brother, conditions under which you found your brother.

MS NOMPILO NKOSI: Yes.

ADV DIRK GROENEWALD: Now once again Mam, you knowing the facts and the witness coming here and testifying something totally different, how does that make
20 you feel?

MS NOMPILO NKOSI: It hurts, it makes me feel angry, but more than anything, it hurts, because we spent so much time on this trying to stop the process, trying to let them know that this is not okay, this will not end well and yet, ja.

ADV DIRK GROENEWALD: Mam I also want to put a proposition to you. There is a lot of speculation as to why was this contract terminated with Life Esidimeni and how did the NGO's become involved and what was the criteria and all those kinds of things and we put the question to Dr Manamela that it was the Department who manipulated the licensing process to suit their needs and we amongst other, put the evidence of Mrs Dorothy Franks to her, where Mrs Franks testified and said well, I was just instructed, they told me that I am going to take 150 patients, I never applied for 150 patients, the Department said you will get 150 patients. I just want to quickly take you to a document at File 7, Page 2424 that can assist you with that, just in support of this proposition that I am going to put to you. Mam we have there, it's on the letterhead of the Gauteng Province, in the right hand corner is district Tswane Precious Angels, House 2, Danville and then it says new NGO report and it says name of NGO Bokang Centre and the date visited was the 21st of February 2016. The team was Mr F. Tobane, we have heard about him during these proceedings and Ms Jacobus, we have also heard about her in these proceedings. Now they describe the type of facility there and I want to point out a few things to you, if you go to Page 2425, there just before interior, it says the backyard there is no space and a small side area on both sides, so they know there is no space there. If you go down there interior, it says there if you down to the 7th line, fridge and cold freezer would be possible to be fitted, do not have a separate scullery but functional

sink. Have space for a rehabilitation area, has a sitting room area fully furnished, but if you go further down, well amongst others, on another point, accommodation space, there where the people should stay, they say the accommodation space can be identified for rehabilitation area. Administration, space is available to be utilised 5for an office, lockable cupboards have to be placed. Now the long and the short of the proposition that I would like to put to you, it was not as if the NGO's came to the Department and said here is my facility, here is what I have, kindly approve me yes or no. The Department went and the Department said well you can put in cupboards here and you can put a fridge there and you can have a kitchen and it 10was the Department who fully knew and they actually attempted to convert these NGO's in workable programmes which they could not do, or workable facilities, which they could not have done. Sorry let me rephrase it to you, my proposition is that the Department manipulated those licences for the number of people, they were intricately involved with these NGO's and they instructed those NGO's well 15you can put a cupboard here and you can put a kitchen here and so on, they fully knew that those NGO's were not capable of looking after the people.

ARBITRATOR JUSTICE MOSENEKE: You will have to put a question some time Counsel? I can hear the question, I don't want to formulate it, but I think you have to formulate it?

20**ADV DIRK GROENEWALD**: Well I think I have to break it down Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes you have to.

ADV DIRK GROENEWALD: The one question is Mam you will agree with me that according to the evidence, these NGO's were not assessed by the government.

MS NOMPILO NKOSI: I would agree yes. If I may, even if they were to okay I need to say it in Zulu, maybe I might mix a little bit of English in there [Zulu].

5**ARBITRATOR JUSTICE MOSENEKE**: Yes I don't think they went to inspect NGO's but even if they did, it wouldn't have mattered because they had made up their minds that it was going to happen. Those were going to serve as NGO's whatever their condition was and they were going to serve NGO's for mental healthcare users whatever we might have thought about it, they are being used as 10NGO's. In other words, you are saying they could have checked, but they were clear in their own minds, they were going to do exactly that, i.e. to find NGO's and use them that's, your answer.

ADV DIRK GROENEWALD: Thank you very much Justice. Thank you very much Mam, thank you for all the work that you have done irrespective of what happened, I 15think you made a difference and was it not for people like you, I think a lot more people would have died, so thank you very much.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel, Advocate Ngutshana?

ADV PATRICK NGUTSHANA: Thank you Justice Moseneke, Mam there is just one point I want to canvas with you. In fact, I want to give you an opportunity to 20comment on what the MEC may possibly come to testify on in relation to your memorandums. Let me take you to Volume 1 of the bundle of documents and the specific pages I want to take you to, is Pages 21 and 22. On Page 21, at the

bottom of the page the last bullet point, it says a memo pointing out a possible risk, this is an interview with the Ombud, the MEC's response to the Ombud's interview and it records a memo pointing out possible risks of the project written by the clinicians to Dr Manamela and copied to the MEC and HOD was brought to her attention and in response, the MEC was asked when did she see the memo and then it proceeds the Ombud further pointed out that the risks identified, have come to pass, relapses which lead to NGO closure, patients moved back into hospital, quality of care low if not absent in NGO's, some of the observations/experiences of the care provided at NGO was given to the MEC. Then the question will follow after this, on Page 22, the second bullet point on the top left, it reads as follows, in response to the ignored advice, she argued, that is the MEC, the former MEC, she argued the concerns/advice of SASOP was sent to the HOD and Dr Manamela and not directly to her, otherwise she would have addressed the issues. She also argued that in all the meetings, none of the [inaudible] raised these concerns with her. Do you want to comment on these denials that she was not aware of the concerns raised to her?

MS NOMPILO NKOSI: This Justice is not true, this is not true. We have her email address, we sent queries to her, we spoke to her, we told her, I was in some of those meetings a week before the march of 27th of October. We were in one of her offices in the Department of Health. It was myself, Sasha from Section 27, Casey Chambers from SADAG, Talatala was there, Leon was there, even Bernard was there-

ARBITRATOR JUSTICE MOSENEKE: Who is Leon, who is Bernard, who is Talatala?

MS NOMPILO NKOSI: Dr Talatala is from SASOP. Well I don't know if Leon is a doctor or not or Bernard is a doctor or not, but they are from South African Health Federation.

ARBITRATOR JUSTICE MOSENEKE: Okay but you do get the question. Counsel is saying that was the response of the MEC to the Ombud. If they had told me, I would have dealt with this thing.

MS NOMPILO NKOSI: She was told, I was there, she was told.

10**ARBITRATOR JUSTICE MOSENEKE**: And she says if Dr Manamela had told her, she would have acted and Counsel anticipates that that will be her stance here, so we will be left with a situation where the Head says the junior didn't tell me and the junior says the Head had instructed me.

MS NOMPILO NKOSI: On that day, she was chairing the meeting. All of those 15people that I mentioned, did it voice it out, they told her, I was there.

ADV PATRICK NGUTSHANA: Ja in fact it is in two parts. The first part is whether Dr Manamela did inform her and the second part it is whether she did receive these concerns from SASOP that is the stakeholders such as you and so on.

MS NOMPILO NKOSI: I don't know what happened between her and Dr Manemela, 20but I am certain that she was told I was there.

ADV PATRICK NGUTSHANA: And to which organisation did Dr Talatala belong?

MS NOMPILO NKOSI: He belonged in SASOP.

ADV PATRICK NGUTSHANA: So the reference to SASOP there, it should be incorrect that she has not received anything from SASOP.

MS NOMPILO NKOSI: That is a lie.

5**ADV PATRICK NGUTSHANA**: So then let me refer you to- you have made mention that there was a meeting that is the second meeting-

ARBITRATOR JUSTICE MOSENEKE: Well before you step away from your reference on Page 22, the MEC then says, you can see it in front of you there, Page 22, bullet point 4, the MEC accepts that if they could have done things differently, 10they would have communicated better with families and all other stakeholders could probably have taken a longer time to transfer patients and ensured supervision of individuals. She regrets the death of the users, she argued that when taking decisions, you never know how right or wrong they are. She reiterated that in her discussion with the Mental Health Review Board, colleagues who have been in the 15system for some time, it was clear that the decision was correct and long overdue. If she knew patients were going to die, she would not have taken the decision, she has not felt the passive resistance until now, she indicated that people have differed with her before in meetings. She also indicated that she has invited Sifiso Pagati to some meetings and the climate was open. So that record there purports to record 20what the MEC said. If she had known what the clinicians and families were complaining about, she would not have made the same decision and she did not

know that people were dying and she did not know whether the decision was right or wrong. What do you say to that?

MS NOMPILO NKOSI: We had 3 marches Justice, 3 and in all the 3 memorandums, it clearly states this is a lie, she knew, she just chose to do what she wanted to do, she knew. The media helped us a lot, surely she watches the news, she reads the paper, she knew. Like I just said, stakeholders were involved in meetings, they told her she knew Justice.

ARBITRATOR JUSTICE MOSENEKE: Including that people might die?

MS NOMPILO NKOSI: She knew Justice, she knew, because by the time we had that march, people were already dying. By the time we had the second march, people were dying she knew Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel?

ADV PATRICK NGUTSHANA: Yes and in order to close this point, let me refer you to ELA93, that is one of your memorandum's dated 16 February 2016, in this memorandum, you testified that it was received by the MEC.

MS NOMPILO NKOSI: Yes.

ADV PATRICK NGUTSHANA: And before she received it, she protested that her name does not appear there.

MS NOMPILO NKOSI: Yes.

ADV PATRICK NGUTSHANA: And you requested her to cancel that out or to scratch it out and replace it with her name.

MS NOMPILO NKOSI: Yes I did.

ADV PATRICK NGUTSHANA: And thereafter she signed for receipt of it.

MS NOMPILO NKOSI: Correct.

ADV PATRICK NGUTSHANA: And you had indicated that one copy of that document was given to Section 27 for safekeeping.

MS NOMPILO NKOSI: Correct.

ADV PATRICK NGUTSHANA: And by virtue of this document that is the memorandum, you raised certain issues specifically in the middle of the document, it records after the Department's actions, are callous, immoral and unlawful. You state that when the Department announced its decision in October 2015, experts spoke out and told the Department it was not feasible. The Department ignored them, so these experts you refer to, are you referring to Dr Talatala or SASOP?

MS NOMPILO NKOSI: At the point, Dr Talatala fell under SASOP, so I would say both.

ADV PATRICK NGUTSHANA: Then you proceed concerned organisations and family members were then forced to take legal action. The Department, to avoid the litigation, entered into a settlement agreement by which it was bound to stop all discharges, consult and develop a plan to ensure that residents will only go to facilities offering services of no lesser quality than they receive at Life. So by virtue of this, the MEC at least received information or concerns from your side as stakeholders as well as experts informing her about the risks.

MS NOMPILO NKOSI: Yes the former MEC did receive them.

ADV PATRICK NGUTSHANA: And this was in mid-February 2016.

MS NOMPILO NKOSI: Yes.

ADV PATRICK NGUTSHANA: And despite being warned from your side as well, 5no actions were taken to mitigate the risks which were pointed out.

MS NOMPILO NKOSI: Not that I know of, no.

ADV PATRICK NGUTSHANA: Were you informed of any possible actions taken by the MEC specifically to mitigate of the risks that were pointed out to her?

MS NOMPILO NKOSI: Not that I know of, no.

10**ADV PATRICK NGUTSHANA**: From any other officials like Dr Manemela, were you informed of any other risks which were undertaken to mitigate?

MS NOMPILO NKOSI: No.

ADV PATRICK NGUTSHANA: Okay thank you Justice Moseneke, I don't have anything further to add on this.

15**ARBITRATOR JUSTICE MOSENEKE**: Thank you, Advocate Hutamo?

ADV TEBOGO HUTAMO: Good afternoon we would like to thank you for coming to these proceedings to explain your involvement during the transfer of patients from Life Esidimeni facility to various institutions and your involvement was particularly in respect of your brother Sizwe. You have mentioned that he appears to have been 20cared very well at Life Esidimeni before his transfer.

MS NOMPILO NKOSI: Correct.

ADV TEBOGO HUTAMO: And subsequent to his transfer, he appeared not to have been cared properly. You have mentioned that after he was transferred, he appeared to be losing a lot of weight which was an indication of lack of care.

5**MS NOMPILO NKOSI**: He lost a lot of weight.

ADV TEBOGO HUTAMO: Yes and from your explanation, you have indicated that it will appear that the government was not looking after, these patients properly is that how I understood your evidence?

MS NOMPILO NKOSI: Correct.

10**ADV TEBOGO HUTAMO**: I just want to say that we regret for how the transfer was managed and we have already heard the evidence of those who have passed on during this process and from your evidence, you have mentioned that after all interventions, your brother was returned to Waverley in Germiston, is that how I understood your evidence?

15**MS NOMPILO NKOSI**: Correct.

ADV TEBOGO HUTAMO: And what is his condition so far?

MS NOMPILO NKOSI: Please refer to ELA105, he is doing better.

ADV TEBOGO HUTAMO: And there appears to be some improvement in the manner in which he is being cared for.

20**MS NOMPILO NKOSI**: Correct.

ADV TEBOGO HUTAMO: Have you heard of one of the family members from the family committee who has been appointed to the Review Board?

MS NOMPILO NKOSI: Correct.

ADV TEBOGO HUTAMO: Have you been able to make any contact in terms of wanting to know the conditions under which the patients are being looked after?

MS NOMPILO NKOSI: We have made contact and yes, we have enquired, correct.

ADV TEBOGO HUTAMO: And do you make regular enquiries in order to ensure that the situation does not get back to where you have been, I mean where the patients have been?

10**MS NOMPILO NKOSI:** Correct and if I may elaborate there, we have actually also complained that the patients at Selby, it was supposed to be a temporary thing, because Selby is a hospital, it's not structured as a mental health facility, so initially the agreement was that it was temporary and it is not a conducive environment and we asked the government if they could please do something about that, but still
15nothing.

ARBITRATOR JUSTICE MOSENEKE: I will interpret, we have been quite unhappy about the presence of some of the patients at Selby, we have put it out to government that Selby ought to be a temporary place, but despite our requests, patients continued to be kept at Selby which is built as a regular conventional
20hospital and not a place to keep mental healthcare users.

ADV TEBOGO HUTAMO: You say you have communicated or transmitted this information to a member of the family committee who is also a representative in the Review Board?

MS NOMPILO NKOSI: Yes as well as the current MEC and pretty much the Department of Health.

ADV TEBOGO HUTAMO: Okay thank you. You have given us an indication of how Sizwe appeared when he was happy. You have mentioned that when he is happy, he will hum, is that how I understood your evidence?

MS NOMPILO NKOSI: Correct.

10**ADV TEBOGO HUTAMO**: And that has been observed prior to his transfer?

MS NOMPILO NKOSI: Correct.

ADV TEBOGO HUTAMO: And after his return to the facility at Life Esidimeni when his condition improved, he continued to hum when you made contact with him.

MS NOMPILO NKOSI: Yes.

15**ADV TEBOGO HUTAMO**: Okay, we just want to say that from your involvement in relation to this mental healthcare users, is very much appreciated and we have noted all the concerns that you have raised and it is through the involvement of all the parties, that the situation relating to the users should improve and we hope that the future will look better through the involvement of all family members, the
20government as well as other interested parties and we just want to thank you for

your involvement and the time that you have taken to attend to these proceedings, thank you. I have no further questions Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you Counsel. As you know, you are entitled to respond to the propositions that were made to you by Counsel.

5 **MS NOMPILO NKOSI**: I accept what you are saying when you say thank you okay.

ARBITRATOR JUSTICE MOSENEKE: It is all in your hands, if you are done, you are done, then we are going to go to phase 2, which is to go back to your Counsel for re-examination and the final word from you.

ADV LILLA CROUSE: Thank you Justice, Mam there are only 3 issues that I
10 quickly want to deal with. You were asked whether there were any consultations. Were there any prior consultations with you as a family before the decision was made?

MS NOMPILO NKOSI: Not from the Department.

ADV LILLA CROUSE: Are you aware of any consultations that took place with the
15 mental healthcare users before the decision was made?

MS NOMPILO NKOSI: No.

ADV LILLA CROUSE: Then the other issue that I just quickly want to deal with, your brother was in fact for a short while in Anchor is that right?

MS NOMPILO NKOSI: Yes.

20 **ADV LILLA CROUSE**: He was sent there on the 23rd of June 2017, is that right?

MS NOMPILO NKOSI: That is right.

ADV LILLA CROUSE: And October 2016 Anchor was closed.

MS NOMPILO NKOSI: Yes.

ADV LILLA CROUSE: So the photographs were all taken at the time of CCRC, is that right?

MS NOMPILO NKOSI: That is correct.

ADV LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Well we have come to a time when you have a right to say what sits on your mind before you leave the witness stand.

10 **MS NOMPILO NKOSI**: Thank you Justice, on the 24th of December 2016, we had to take my brother back to Cullinan because he had relapsed in a way that we have never experienced before and having to drive him from home to Cullinan that distance, it was really, really challenging and right now, we are still facing the challenges of some patients still being at Cullinan-

15 **ARBITRATOR JUSTICE MOSENEKE**: Sorry had you taken him home for December and you had to then drive him back?

MS NOMPILO NKOSI: Yes.

ARBITRATOR JUSTICE MOSENEKE: Because he had relapsed while at home?

MS NOMPILO NKOSI: Yes and we did not spend Christmas with him for the first time ever. The point to this story, is that there are still loved ones who are in

Cullinan whose families are in Johannesburg. It is really hard to have your loved one that far. Could something be done about that please? I would like to take this opportunity to thank all those that helped us to get to where we are right now, that being SADAG, Section 27, SASOP, South African Health Federation, the Ombud
5for his report, the media, families and friends and thank you Justice for taking your time out to be here and do this. For those that I haven't mentioned, I am sorry. Thank you to the families of the loved ones of the patients for being so united and for sticking it through with us, thank you so much, we appreciate the love. This was a joint effort, it was not an individual who pulled this through, it was families, sadly
10their names were not, mentioned but we do recognise you and we do appreciate your help. Thank you so much.

ARBITRATOR JUSTICE MOSENEKE: I must thank you too for- good countries are marked by good citizens, active citizens and I shouldn't preach to you because you are a person who clearly knows when to raise her neck and head and make her
15point and it is something that is quite important, we will talk a little later about that, but it's my way of saying thank you for your role. At the heart of all this, sits a right called dignity, human dignity, equality, right of access to healthcare, I might add quality healthcare which always must go with equal worth, equal regard and dignity, that is what is at stake with your brother, but much, much bigger.

20**MS NOMPILO NKOSI:** And to Legal Aid, thank you for taking us on at such a very late stage, at such short notice, thank you.

ARBITRATOR JUSTICE MOSENEKE: Yes okay, we have a lot of work ahead of us and see how far it takes us to. Thank you, you may stand down.

ADV LILLA CROUSE: Is this an appropriate time to take the mid-adjourment?

ARBITRATOR JUSTICE MOSENEKE: I actually think it is and we will take 2 witnesses in afternoon. Thank you we are adjourned until 2:30.

1 December 2017

5 **SESSION 3**

ARBITRATOR JUSTICE MOSENEKE: Thanks you may be seated. Adv Crouse?

ADV LILLA CROUSE: Thank you, Justice. So your next witness is MR. Joseph Ngwenya, he will speak in isiZulu and he will take the oath, Malulu Fred is going to lead him.

10 **JOSEPH NGWENYA:** Good afternoon Justice let me place my name on record once more.

ARBITRATOR JUSTICE MOSENEKE: Yes, ja it should be occurred by now but if you have a big desire to do it, of course, do it, but it should be okay by now.

JOSEPH NGWENYA: No its fine Justice, may the witness make his oath?

15 **ARBITRATOR JUSTICE MOSENEKE:** Yes, please do so, please go ahead if you feel like. Do you swear that the evidence you are about to give will be the truth and nothing but the truth and if so please raise your right hand and say so help me God. I should have asked you your full names on record, please.

JOSEPH NGWENYA: Joseph Ngwenya.

20 **ARBITRATOR JUSTICE MOSENEKE:** Council?

ADV ADV NOTLANTLA YINA: Mr. Ngwenya you have a family member who is a mental health care user am I correct?

JOSEPH NGWENYA: Yes, that is correct.

ADV ADV NOTLANTLA YINA: What is his name?

5**JOSEPH NGWENYA:** Sisobisa Ngwenya.

ADV ADV NOTLANTLA YINA: Just try to raise your voice a bit and repeat.

JOSEPH NGWENYA: His name is Sisibisa Ngwenya.

ADV ADV NOTLANTLA YINA: How are you related to Sisobisa Ngwenya?

JOSEPH NGWENYA: He is my son.

10**ADV ADV NOTLANTLA YINA:** How old is he?

JOSEPH NGWENYA: 21 years old.

ADV NOTLANTLA YINA: Is he able to talk?

JOSEPH NGWENYA: No he can't speak well.

ADV NOTLANTLA YINA: Is he able to walk by himself?

15**JOSEPH NGWENYA:** Yes, council.

ADV NOTLANTLA YINA: Did he go to school?

JOSEPH NGWENYA: No he did not go to school.

ADV NOTLANTLA YINA: You say that Sisobisiso is a mental health care user, what is wrong with him?

JOSEPH NGWENYA: He is autistic.

ADV NOTLANTLA YINA: When did that start or when was he diagnosed as such?

JOSEPH NGWENYA: When he was ten years.

ADV NOTLANTLA YINA: Right during 2015 when this marathon project was initiated where was Sibosiso?

JOSEPH NGWENYA: At Life Esidimeni Randfontein.

ADV NOTLANTLA YINA: Just tell us the time when was he – when was he admitted at Randfontein?

JOSEPH NGWENYA: He was admitted in 2014.

10 **ADV NOTLANTLA YINA:** How did he end up at Randfontein care centre?

JOSEPH NGWENYA: When he arrived at Life Esidimeni he was from Avril Elizabeth.

ADV NOTLANTLA YINA: When he was at Randfontein care centre how was his condition thereafter he was admitted?

15 **JOSEPH NGWENYA:** When he was admitted he was not well because he was from the hospital at Charlotte Maxeke hospital.

ADV NOTLANTLA YINA: You mean he was referred by Charlotte Maxeke hospital?

JOSEPH NGWENYA: Yes, that is correct council.

ADV NOTLANTLA YINA: How was his condition after he was admitted at Randfontein care centre?

JOSEPH NGWENYA: When he arrived at Randfontein he was from the hospital so his health was – he was not in a good health condition.

5**ADV NOTLANTLA YINA:** Did he get medication at Randfontein care centre?

JOSEPH NGWENYA: Yes, council.

ADV NOTLANTLA YINA: Then tell us then about the move if there was at some stage, he was moved from Randfontein care centre. Can you tell us when did you learn that he was moved?

10**JOSEPH NGWENYA:** There was a time that I – we paid him a visit and we learned that Life Esidimeni was going to be closed down.

ADV NOTLANTLA YINA: When did you learn that it was going to be close down?

JOSEPH NGWENYA: It was in 2015, I can't remember the month.

ADV NOTLANTLA YINA: And you learned that Life Esidimeni Randfontein is going
15to be closed as [inaudible 08:36] from there?

JOSEPH NGWENYA: After that, I was paying him a visit every fourth night after two weeks. And then I learned from the staff that Randfontein was going to be closed down and the patients were moved though we were not told that they are going to be moved to [inaudible 09:32] place. And then the time arrived for
20Randfontein – then Randfontein was closed down, when I went there to visit Sibosiso I was told that they were already transferred. I then asked them where did

they transfer him to because he was not able to talk. The security at the gate said that we must speak to the sister in charge, I did ask the sister and she said Sibosiso was among the last group and it means that he was transferred to Cullinan. And then the sister gave me the telephone number for Cullinan, I did phone Cullinan 5care centre. Indeed they did confirm that Sibosiso was there at Cullinan care centre. I spoke to the social worker Miss Daphney, I then rushed to Cullinan care centre when I arrived there at the gate I was told that the last group that was brought there they were indeed at the Cullinan care centre.

ADV NOTLANTLA YINA: Did you find that indeed Sibosiso is at Cullinan care 10centre?

JOSEPH NGWENYA: Yes, council.

ADV NOTLANTLA YINA: Did you know Cullinan care centre when you received a message that he has been transferred to Cullinan care centre?

JOSEPH NGWENYA: I did not know where the Cullinan care centre was but I 15knew the diamond centre because I used to take people there.

ADV NOTLANTLA YINA: So you were there you arrived and it has been confirmed that Sibosiso is indeed or was indeed at Cullinan care centre then proceed?

JOSEPH NGWENYA: When I arrived there I got the security, they made me sign the register and then they called someone who will bring Sibosiso to me. And then 20the caregiver came with Sibosiso and in the room where I was waiting. When they arrived I did not recognised that this was my son. Because he had lost so much weight and his complexion has changed as well he was now very dark. And his hair

was not neat it was like someone was staying in the bush, the smell was not that of an human being. I had a plastic with food that I bought for him, when I arrived there he took the plastic and he ate that food very quickly. That showed me that he was very hungry and then I asked the caregiver as to why was Sibosiso so hungry and 5he has also changed like I said the complexion was changed, I asked the caregiver as to why. And then she – her response was that he is not used to the place but he will adjust. I said no I don't believe because Sibosiso has changed a lot, I haven't seen him in that state. And then she said no he will adjust because everywhere all of them who come here they go through this. I did not continue asking her questions 10and the last question that I asked was where did they stay. And then he directed me and say that they are staying there but we are not allowed to go in there and that is when I left the place because it was in the evening.

ADV NOTLANTLA YINA: Alright Mr. Ngwenya I'm just going to take you a little bit back just to clarify something. You said that his hair was long and that he was 15smelling, what was smelling?

JOSEPH NGWENYA: The smell it shows that it felt like someone who soiled himself and it seems like he was not washing because of that particular smell.

ADV NOTLANTLA YINA: Did he come in walking by himself or was there anyone supporting him when he was brought to you?

20**JOSEPH NGWENYA:** Hew as not able to walk the caregiver gave her support, he was walking like an old man.

ADV NOTLANTLA YINA: After how long did you visit him at Cullinan after he had been transferred from Randfontein care centre?

JOSEPH NGWENYA: I would visit him twice a month but if there was an emergency I would go there.

5**ADV NOTLANTLA YINA:** The question that I want to clarify is that you received a message that now he is no longer at Randfontein care centre, now at that time he was at Cullinan care centre. The question that I want clarity to is did you get a message as to when was he transferred to Cullinan care centre?

JOSEPH NGWENYA: I did not get the message I only heard after a week that he
10was transferred, that is when I went to visit him.

ADV NOTLANTLA YINA: And when you found him at Cullinan care centre how was his body weight, he told us that he ate food like he was so much hungry?

JOSEPH NGWENYA: Sobisiso was somebody with a well build body but when I arrived there he has lost a lot of weight.

15**ADV NOTLANTLA YINA:** How often did you visit him when he was at Cullinan care centre?

ARBITRATOR JUSTICE MOSENEKE: The witness already said twice a month and he would go additionally when there is an emergency.

ADV NOTLANTLA YINA: Thank you, Justice. I omitted I missed that part.

20**ARBITRATOR JUSTICE MOSENEKE:** You may proceed.

ADV NOTLANTLA YINA: Than you, Justice. Then after that first visit, you left him at Cullinan care centre , am I correct?

JOSEPH NGWENYA: Yes, that is correct.

ADV NOTLANTLA YINA: The other incident when he was in hospital at Mamelodi
5can you briefly tell us about that?

JOSEPH NGWENYA: I was called – I received a phone call from Miss Daphney Ndlovu to tell me that Sibosiso was admitted at Mamelodi hospital. And I then left and went to Mamelodi hospital though I did not know the hospital at that time.

ADV NOTLANTLA YINA: In which month do you remember?

10**JOSEPH NGWENYA:** Justice, I can't remember exactly but it was around February/ March.

ARBITRATOR JUSTICE MOSENEKE: Of which year?

JOSEPH NGWENYA: 2017.

ARBITRATOR JUSTICE MOSENEKE: And where were you living then?

15**JOSEPH NGWENYA:** I was staying at Hillbrow which is where I'm still staying right now.

ARBITRATOR JUSTICE MOSENEKE: And the distance to Cullinan would have been what, 70 or 80 kilometers?

JOSEPH NGWENYA: It was around 80 k's because it took me one hour to go
20there.

ADV NOTLANTLA YINA: Thank you, Justice. So did you go and visit him then in March after you had heard that he had been taken to – or were transferred to Mamelodi hospital?

JOSEPH NGWENYA: Yes council.

5**ARBITRATOR JUSTICE MOSENEKE:** But what does this mean – it means from May 2016 through to March 2017 Sibosiso was at Cullinan?

JOSEPH NGWENYA: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: And did they keep him on the same side of the centre or was he once moved to Anchor or Siadibinga?

10**JOSEPH NGWENYA:** According to my knowledge it was at Cullinan care centre.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV NOTLANTLA YINA: Thank you, Justice. At Mamelodi hospital what was wrong with him when he was at the hospital at Mamelodi?

JOSEPH NGWENYA: We did not know what was his problem because he sometimes tend to be violent and he used to break things, the windows and anything that he comes across.

ADV NOTLANTLA YINA: It was still due to his mental illness that is why he was transferred from Cullinan to Mamelodi hospital accordingly?

JOSEPH NGWENYA: Yes, I think that is correct council.

20**ADV NOTLANTLA YINA:** How long did he remain in Mamelodi hospital?

JOSEPH NGWENYA: For almost a month.

ADV NOTLANTLA YINA: Alright. And ultimately where were he transferred after having been return back to Cullinan care centre?

JOSEPH NGWENYA: After he was discharged at Mamelodi hospital he was returned to Cullinan care centre.

ARBITRATOR JUSTICE MOSENEKE: But did his condition improve in all of the time that he was there from 2016 through to 2017?

JOSEPH NGWENYA: No it did not improve honourable Justice.

ARBITRATOR JUSTICE MOSENEKE: He couldn't speak at all?

10**JOSEPH NGWENYA:** Yes he was able to speak but we could not get to what he was saying, except if you – we were used to him we knew or we could understand what he was saying.

ARBITRATOR JUSTICE MOSENEKE: And he remained thin or emaciated most of his stay at Cullinan?

15**JOSEPH NGWENYA:** Yes, that is correct honourable Justice.

ARBITRATOR JUSTICE MOSENEKE: And how was his emotional condition, was he happy?

JOSEPH NGWENYA: Sibosiso every time that I went to visit him, he would say to me Mba it means he was inviting me to kiss him. When I visited him there at the
20Cullinan centre he could not do that because there were sores on his lips.

ARBITRATOR JUSTICE MOSENEKE: And in your assessment was he relaxed and pleasant or was he unhappy?

JOSEPH NGWENYA: He was not happy according to my assessment.

ARBITRATOR JUSTICE MOSENEKE: Why didn't you take him home?

5**JOSEPH NGWENYA:** Justice it was very difficult for us to take him home because initially when he got – when he was admitted at Avril Elizabeth he was becoming violent he would break things, he would fight with people.

ARBITRATOR JUSTICE MOSENEKE: And lastly at Cullinan do you know whether he was on medication?

10**JOSEPH NGWENYA:** Well, I did not see his file but I think he was taking medication because I was told that Sibosiso had TB when he left Randfontein.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

ADV NOTLANTLA YINA: According to LA 11 the report from Cullinan health care centre at page 4, patient 24...

15**ARBITRATOR JUSTICE MOSENEKE:** Number what council?

ADV NOTLANTLA YINA: LA 11.

ARBITRATOR JUSTICE MOSENEKE: 11 Thank you.

ADV NOTLANTLA YINA: Page 4 of LA 11. A number 24 there is Ngwenya Sibosiso there, do you see his name?

20**JOSEPH NGWENYA:** Yes, council.

ADV NOTLANTLA YINA: According to the heading it shows that he was admitted at date of admission at Cullinan health care centre was 23 June 2016?

ARBITRATOR JUSTICE MOSENEKE: On what page is that?

ADV NOTLANTLA YINA: Page 4, Justice.

5**ARBITRATOR JUSTICE MOSENEKE:** Thank you.

JOSEPH NGWENYA: Yes, I can agree because I was not noting the dates.

ADV NOTLANTLA YINA: And the date of transfer or discharge from Cullinan health care centre is 26 April 2017? His destination was then reported as Waverly?

JOSEPH NGWENYA: Yes, that is correct council.

10**ADV NOTLANTLA YINA:** Where you made aware that when he had been transferred from Cullinan care centre to Waverly?

JOSEPH NGWENYA: Council?

ADV NOTLANTLA YINA: Was the witness made aware or informed when Sibosiso had been transferred from Cullinan care centre to Waverly?

15**JOSEPH NGWENYA:** Yes, they did inform me.

ADV NOTLANTLA YINA: After he had been at Waverly, had did you visit him?

JOSEPH NGWENYA: At Waverly eh did not stay long because when I went to visit him there I was told that he was taken to Thembisa Hospital.

ADV NOTLANTLA YINA: What was wrong you know why he was transferred
20from Waverly to Thembisa hospital?

JOSEPH NGWENYA: they told me that they could not control Sibosisio because he was a violent person.

ADV NOTLANTLA YINA: Thank you, before you proceed. Justice I must state it up front and the evidence that I'm going to lead with this witness now regarding to what happened at Thembisa hospital is outside the timeline during this project. But however, my submission is that it is relevant the evidence that witness is going to testify it is very much relevant. So at Thembisa hospital, you did you visit him there?

JOSEPH NGWENYA: Yes when I left Waverly I went straight to Thembisa at that particular day though it was already in the evening.

10 **ADV NOTLANTLA YINA:** In which month do you still remember?

JOSEPH NGWENYA: I think it was around June 2017.

ADV NOTLANTLA YINA: Just tell us this date upon which you found him - when you found him at Thembisa hospital.

JOSEPH NGWENYA: When I arrived at Thembisa hospital it was just after six in 15 the evening. And I asked that I wanted a patient from Waverly by the name of Sibisiso Ngwenya and I was directed to the ward where he was kept. When I arrived at that ward I got something that I did not expect, Sibosisio when I went into that ward he was naked. He was tied by his bed with a bandage that bandage was so tight on his wrist and he was like trying to untie those bandages. That ward was full 20 of human feces. If I'm not mistaken it was very cold on that particular day I think the temperature was around 1. the bed did not have a mattress, the base was made of

sink. And when I looked around I discovered that there was a corpse in that ward where Sibisiso was in.

ADV NOTLANTLA YINA: Sorry Justice I see my college for the state has got something.

5**ADB TEBOGO HUTAMO:** Thank you, Justice. We have been pre-warned by [inaudible 40:32] friend that the evidence is outside the period in question and it goes into detail, we just want to know exactly what is the relevance of this evidence. Because it addresses issues way out of the period which is in question.

ARBITRATOR JUSTICE MOSENEKE: What is your response to the objection?

10**ADV NOTLANTLA YINA:** Justice, with all the respect for my friend, the witness is testifying given evidence this all shows that the mental health care user relapsed so that is why this evidence is very much relevant.

ARBITRATOR JUSTICE MOSENEKE: The sequent lies to the treatment he had or the absence of proper treatment during the relevant period.

15**ADV NOTLANTLA YINA:** That is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: I think I'm minded to allow the evidence. It is a consequence of improper, earlier improper health care I think that is the [inaudible 41:49] by your college and why wouldn't that be omissible.

ADV TEBOGO HUTAMO: Justice, what is our concern is that after the project
20having been terminated and patients been relocated to the facilities which are supposed to be taken care of them. And what has been transpired is now that the

patient is under the care of a facility which is believed to be able to provide proper care which is Life Esidimeni and if this is a matter which has arisen now it is surely outside of the scope of what we are here for. It will then mean that there will be a matter which needs to be taken up with Life Esidimeni by the government.

5 **ARBITRATOR JUSTICE MOSENEKE:** We will get expert evidence later, we will hear what could be one of the lightly consequences for the relapse for instance. I don't know what they are, the argument is that this aftermath of relapse I will provisionally allow the evidence and we can ask DR Grobler for support or others. What are the consequences off poor treatment of an autistic patient and know what 10 they are. So to stop it here might be very well enduring justice. We have had a lot of evidence of [inaudible 43:48] beyond the period, how your mother, how are you now, how are you coping, all of those are [inaudible 43:56]. And that didn't happened within the period but arise from the period . You may proceed.

ADV NOTLANTLA YINA: Thank you, Justice Moseneke. So you were just telling 15 us about the manner upon which you found Sibisoso at Thembisa hospital. The stage of him being tied and there was a bed and whatever, then proceed from there.

JOSEPH NGWENYA: And I requested to see someone who is in charge of that ward.

ARBITRATOR JUSTICE MOSENEKE: Where there patients other than Sibosiso in 20 there?

JOSEPH NGWENYA: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And how – what is your estimation how many could there have been?

JOSEPH NGWENYA: About ten.

ADV NOTLANTLA YINA: Thank you, Justice. You mentioned about somebody which was lying next to where Sibosiso was, can you just elaborate on that? That was in the time I was interrupted or there was a objection.

JOSEPH NGWENYA: That is when I requested to see the person in charge and I was shown a gentleman I can't remember his name. And I showed him I made him aware of the situation in Sibosisios ward and he said to me that we are going to attend to that. And regard the corpse they covered the corpse with curtains. They told me that there was a possibility that Sibisiso was going to be transferred to Wes Koppies.

ADV NOTLANTLA YINA: Was he ultimately transferred to Wes Koppies?

JOSEPH NGWENYA: Yes after two weeks he was transferred to Wes Koppies.

ADV NOTLANTLA YINA: How did you feel when you saw your son, found him naked in a cold room in the winter, how was your feeling?

JOSEPH NGWENYA: I did not take that very well because I knew that Sibosiso was ill but at the time when he was still at Life Esidimeni I have never experienced anything like that regarding to my son.

ADV NOTLANTLA YINA: Right, he was ultimately transferred to Wes Koppies?

JOSEPH NGWENYA: Yes council.

ADV NOTLANTLA YINA: Where is he currently?

JOSEPH NGWENYA: He is currently at Wes Koppies in Pretoria.

ADV NOTLANTLA YINA: Is he getting any medical treatment at Wes Koppies?

JOSEPH NGWENYA: Yes that is correct council.

5**ADV NOTLANTLA YINA:** How is his condition now?

JOSEPH NGWENYA: His situation is improving because he is regaining his complexion as well.

ADV NOTLANTLA YINA: What about his weight?

JOSEPH NGWENYA: He has gained a bit of weight to his former self.

10**ADV NOTLANTLA YINA:** How did this condition upon which you have found with Sibisiso, how did it affect you had an effect on you?

JOSEPH NGWENYA: I don't understand the question, do you mean at Wes Koppies or where?

ADV NOTLANTLA YINA: What impact did it had all of these movements of
15Sibosiso and also his loss of weight and being moved from – after he had been moved from Life Esidimeni to Cullinan. How did it – what impact did it had on you?

JOSEPH NGWENYA: It was very difficult to such an extent that I lost my work. Because I was a businessman I was operating a meter taxi. During that time in that period, I lost focus to such an extent because I was looking after the life of my child
20and the bank repossessed my vehicle. His elder sister, Sibosiso's elder sister was

doing vet here at the university she was also affected and she could not continue with her studies. The youngest sister as well who was at primary she was also affected it affected her education, her performance in school. And Sibosiso's mother who is my wife she became ill, I don't know the name of the illness but she could not take the situation very well. If I remember well the doctor said it was [inaudible 53:09] . Bulalouspemphigod.

ADV NOTLANTLA YINA: Do you know what is that, what is the effects of that?

JOSEPH NGWENYA: I don't know I also had to ask the doctor to what did that mean.

10**ADV NOTLANTLA YINA:** Its fine let's proceed.

JOSEPH NGWENYA: And the doctor explained to me that it was caused by trauma when you have a lot of trauma. And that affected her skin it was like she was burned by hot water it affected her whole body. And now the body is now dark like the skin is burned at the moment he is on treatment – she is on treatment my 15apologies. And it affected me because I am unemployed at the moment because I chose to look after the life of my son.

ADV NOTLANTLA YINA: Out of this process what do you expect to get?

JOSEPH NGWENYA: What I will expect is that the officials who are in charge fo those institutions that take care of mentally ill patients they must take care of the life 20of these mentally ill patients. Because they are also very important people like everyone when others have passed on but those who have survived they need to be taken care of. If the government must make sure that all of these people all fo

these mentally ill patients we will take care of them and we must know who they are.

ARBITRATOR JUSTICE MOSENEKE: What do you say – to what some leaders in the department of health during the project were saying that there is no money 5enough to look after mental health care users?

JOSEPH NGWENYA: Initially I thought it was to when the government made those presentations but after the testimony here I think that they were lying.

ARBITRATOR JUSTICE MOSENEKE: Were they lying when they said what?

JOSEPH NGWENYA: When they said that they wanted to cut costs.

10**ARBITRATOR JUSTICE MOSENEKE:** Why do you say you think now they were lying?

JOSEPH NGWENYA: Because there was evidence lead by the government officials when they said there was no money but there was evidence lead here that there was a lot of money millions upon millions which was [inaudible 59:53] to 15renovate these other facilities. Especially the evidence lead my doctor Manamela.

ARBITRATOR JUSTICE MOSENEKE: But is it right to say we have no money and therefore we are going to start by cutting expenses related to mentally kept people or people who are in need of mental health care?

JOSEPH NGWENYA: No that is not right honourable Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Why is it not right?

JOSEPH NGWENYA: Because the mentally ill patients they need a high level of care honourable Justice.

ADV NOTLANTLA YINA: Thank you Justice Moseneke. Mr. Ngwenya finally your wife the mother of Sibosiso does she need some sort of counselling?

5**JOSEPH NGWENYA:** Yes a lot.

ARBITRATOR JUSTICE MOSENEKE: How old is Sibosiso now?

JOSEPH NGWENYA: He turn 21 on the 29h of September 2017.

ADV NOTLANTLA YINA: So in the year of 2015 he was 19, If my calculation is correct?

10**JOSEPH NGWENYA:** Yes, that is correct council.

ADV NOTLANTLA YINA: Thank you, Justice. I have not further questions for the witness.

ARBITRATOR JUSTICE MOSENEKE: When he received medication regularly was he also violent?

15**JOSEPH NGWENYA:** Yes honourable Justice and we did not know what was the cause for that.

ARBITRATOR JUSTICE MOSENEKE: So even with medi- even when he is under medication?

JOSEPH NGWENYA: Yes honourable Justice.

20**ARBITRATOR JUSTICE MOSENEKE:** Thank you, council?

ADV ADILA HASSIM: Justice I have no questions for this witness, I just wish to thank MR. Ngwenya for participating and testifying today.

ARBITRATOR JUSTICE MOSENEKE: Thank you, advocate Groenewald?

ADV DIRK GROENEWALD: Thank you, Justice, we have no questions for the witness.

ADV TEBOGO HUTAMO: No questions, no questions Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Advocate Hutamo?

ADV TEBOGO HUTAMO: MR. Ngwenay good afternoon.

JOSEPH NGWENYA: Good afternoon council.

10 **ADV TEBOGO HUTAMO:** We thank you for coming through and given account of the journey that you son Sibosiso has went through.

JOSEPH NGWENYA: I thank you to.

ADV TEBOGO HUTAMO: And you have mentioned that the government officials are required to take responsibility to ensure that all the mental health care users are being taken care of as they are also important – as they should also be considered to be important.

JOSEPH NGWENYA: Yebo, high level of care.

ADV TEBOGO HUTAMO: We hope that through this process with everyone involved the situation with all mental health care users will be improved from the experience that we have went through and which experience is very unfortunate.

JOSEPH NGWENYA: If you promise us that, thank you very much council.

ADV TEBOGO HUTAMO: And we just wanted to thank you in taking part in this process as from finding closure in the pains that you have to endure throughout the process.

5**JOSEPH NGWENYA:** Thank you.

ADV TEBOGO HUTAMO: Thank you Mr. Ngwenya there are no questions to the witness Justice.

ARBITRATOR JUSTICE MOSENEKE: Do you know that the normal constitution provides access to health care?

10**JOSEPH NGWENYA:** Yes I do, Justice.

ARBITRATOR JUSTICE MOSENEKE: And you know that the constitutional right is as a right, not a privilege?

JOSEPH NGWENYA: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: And do you know the constitution the
15government has a negative duty, not t take away existing access to a socio-
economic right?

JOSEPH NGWENYA: Yes, Justice.

ARBITRATOR JUSTICE MOSENEKE: And what do you think happened here –
what do you think happened here when the decision was made to remove your son
20from where he was exposed to access to health care of a particular quality and take
him to another place where the health care was not of the high quality that we

talked about a few times? I will put the question simpler do you think the constitution was honoured to the way your son was treated?

JOSEPH NGWENYA: No it was not respected and they were not offered their rights and others as well.

5**ARBITRATOR JUSTICE MOSENEKE:** And you know that that right of access to health care extends to like somebody who is autistic like your son?

JOSEPH NGWENYA: Yes Justice.

ARBITRATOR JUSTICE MOSENEKE: And even if they can't speak themselves they can demand the right themselves they are still entitled to the right?

10**JOSEPH NGWENYA:** Yes that is correct Justice.

ARBITRATOR JUSTICE MOSENEKE: Well you know a lot about constitutional law. You're re-examination?

PATRICK NGHUTSANA: You know your procedure?

JOSEPH NGWENYA: Yes, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** You have to say that in English interpreter.

The [inaudible] around you must say whatever you want to say as you conclude.

JOSEPH NGWENYA: What I can say now is that I want to make a humble request that we must respect all of the mentally ill patients and we a the community we must also respect them. Because even though they have got different illnesses, the
20essence is that they are all mentally ill. I did not know about autism I only heard

about it when Sibosisio was diagnosed, it is very difficult to live with someone who is autistic. It is very difficult to live with someone who is mentally retarded in any way, because even the community they call them names. If we can find all of those official who is responsible for mental health care people who know a lot about 5mentally ill patients so that they are able to also advise us as families. Because we don't like it when we get official like the one who was presenting her by the name of doctor Manamela. There are others that are mentally ill who are in the farms they are not able to come to this place where we are now. They also need a lot of care, I also thank you for this opportunity to say what I know. I respect all of the families 10who are present here and as well as the councils because we have heard a lot. I hope that what has happened at Life Esidimeni through this Gauteng mental health marathon project may not repeat itself. Because we are now starting another history going for the next 100 years or more and this is very painful, thank you.

ARBITRATOR JUSTICE MOSENEKE: Siabonga. I think you are free to leave the 15stand.

ADV NOTLANTLA YINA: Justice Moseneke my colleague is going to take over and lead another witness if...

ARBITRATOR JUSTICE MOSENEKE: Yes, if what?

ADV NOTLANTLA YINA: If it is proper for us to proceed fro the day?

20**ARBITRATOR JUSTICE MOSENEKE:** There is hackling even in the – from the family courters. They say it is night already it is late, it's evening already which means they want to go. It fine, lest talk about Monday because of the judgment with

the high court we are starting only at 11, is it 11:30. Yes 11:30 and what are your plans then council?

ADV LILLA CROUSE: Justice if this witness stand over then we will have three witnesses to lead on Monday. And we could start with them, I'm a little bit out of 5time now but could I ask that the family members that is represented by us just remain if the court adjourn starts.

ARBITRATOR JUSTICE MOSENEKE: Remain inside?

ADV LILLA CROUSE: If you could ask them if they mind remaining Justice.

ARBITRATOR JUSTICE MOSENEKE: Ok. I have duly executed your request.

10**ADV LILLA CROUSE:** We are very thankful, thank you Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: We are going to adjourn until Monday at 11:30, we are starting on 11:30 on Monday we are adjourned.

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